As filed with the Securities and Exchange Commission May 4, 2021

Registration No. 333-

# UNITED STATES
# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

# FORM S-1
# REGISTRATION STATEMENT

*Under*

*The Securities Act of 1933*

# DAY ONE BIOPHARMACEUTICALS HOLDING COMPANY, LLC

to be converted as described herein to a corporation named

# DAY ONE BIOPHARMACEUTICALS, INC.

(Exact name of Registrant as specified in its charter)

| Delaware | 2834 | 83-2415215 |
|---|---|---|
| (State of incorporation or organization) | (Primary Standard Industrial Classification Code Number) | (I.R.S. Employer Identification Number) |

395 Oyster Point Blvd., Suite 217
South San Francisco, CA 94080
(650) 484-0899

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Jeremy Bender, Ph.D., M.B.A.
Chief Executive Officer
Day One Biopharmaceuticals Holding Company, LLC
395 Oyster Point Blvd., Suite 217
South San Francisco, CA 94080
(650) 484-0899

(Name, address, including zip code, and telephone number, including area code, of agent for service)

*Copies to:*

| | |
|---|---|
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**Approximate date of commencement of proposed sale to the public:** As soon as practicable after the effective date of this registration statement.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box. ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. ☐

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

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

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

**CALCULATION OF REGISTRATION FEE**

| Title of Each Class of Securities to be Registered | Proposed Maximum Aggregate Offering Price(1)(2) | Amount of Registration Fee |
|---|---|---|
| Common Stock, par value $0.0001 per share | $100,000,000 | $10,910 |

(1) The proposed maximum aggregate offering price includes the offering price of additional shares that the underwriters have the option to purchase.
(2) Estimated solely for purposes of calculating the registration fee in accordance with Rule 457(o) under the Securities Act of 1933, as amended.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

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# Explanatory note

Day One Biopharmaceuticals Holding Company, LLC, or Day One LLC, the registrant whose name appears on the cover page of this registration statement, is a Delaware limited liability company. Prior to the effectiveness of this registration statement, Day One LLC will convert into a Delaware corporation and change its name to Day One Biopharmaceuticals, Inc. We refer to this conversion throughout the prospectus included in this registration statement as the “Conversion.” See the section titled “Conversion” for further detail regarding this conversion. As a result of the Conversion, the members of Day One LLC will become holders of shares of stock of Day One Biopharmaceuticals, Inc. Except as disclosed in the prospectus, the consolidated financial statements and selected consolidated financial data and other financial information included in this registration statement are those of Day One LLC and its subsidiaries and do not give effect to the Conversion. Shares of the common stock of Day One Biopharmaceuticals, Inc. are being offered by the prospectus included in this registration statement.

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**The information in this preliminary prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities, and we are not soliciting offers to buy these securities in any jurisdiction where the offer or sale is not permitted.**

**Subject to Completion, dated May 4, 2021**

**Preliminary prospectus**

***shares***

Day One BIOPHARMACEUTICALS

# *Common stock*

This is an initial public offering of shares of common stock by Day One Biopharmaceuticals, Inc. We are offering shares of our common stock to be sold in this offering. The initial public offering price is expected to be between $ and $ per share.

Prior to this offering, there has been no public market for our common stock. We have applied to have our common stock listed on the Nasdaq Global Market under the symbol "DAWN."

We are an "emerging growth company" and a "smaller reporting company" as defined under the U.S. federal securities laws and, as such, have elected to comply with certain reduced reporting requirements.

| | Per share | Total |
|---|---|---|
| Initial public offering price | $ | $ |
| Underwriting discounts and commissions[1] | $ | $ |
| Proceeds to Day One Biopharmaceuticals, Inc., before expenses | $ | $ |

(1) See "Underwriting" for a description of the compensation payable to the underwriters.

We have granted the underwriters an option for a period of 30 days to purchase up to additional shares of common stock.

**Investing in our common stock involves a high degree of risk. See "Risk factors" beginning on page 14.**

**Neither the Securities and Exchange Commission nor any other state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.**

The underwriters expect to deliver the shares of to purchasers on or about , 2021.

**J.P. Morgan** **Cowen** **Piper Sandler**

**Wedbush PacGrow**

**, 2021**

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**Through and including , 2021 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.**

Neither we nor the underwriters have authorized anyone to provide any information or to make any representations other than those contained in this prospectus or in any free writing prospectuses we have prepared. We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. This prospectus is an offer to sell only the shares offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus or in any applicable free writing prospectus is current only as of its date, regardless of its time of delivery or any sale of shares of our common stock.

For investors outside of the United States: We have not, and the underwriters have not, done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than the United States. Persons outside of the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the shares of common stock and the distribution of this prospectus outside of the United States.

## Basis of presentation

The consolidated financial statements include the accounts of Day One Biopharmaceuticals Holding Company, LLC and its subsidiaries. Prior to the closing of this offering, we will complete a corporate conversion pursuant to which Day One Biopharmaceuticals, Inc. will succeed to the business of Day One Biopharmaceuticals Holding Company, LLC and its consolidated subsidiaries, and the unitholders of Day One Biopharmaceuticals Holding Company, LLC will become stockholders of Day One Biopharmaceuticals, Inc., as described in the section of this prospectus titled “Conversion.” In this prospectus, we refer to this transaction as the “Conversion.” We expect that our conversion from a Delaware limited liability company to a Delaware corporation will not have a material effect on our consolidated financial statements included elsewhere in this prospectus.

# Prospectus summary

*This summary highlights selected information contained elsewhere in this prospectus and does not contain all of the information that you should consider in making your investment decision. Before investing in our common stock, you should carefully read this entire prospectus, including our consolidated financial statements and related notes and the information set forth under the sections titled "Risk factors," "Selected consolidated financial data" and "Management's discussion and analysis of financial condition and results of operations," in each case included in this prospectus. Some of the statements in this prospectus constitute forward-looking statements that involve risks and uncertainties. See the section titled "Special note regarding forward-looking statements." Prior to the effectiveness of this prospectus, Day One Biopharmaceuticals Holding Company, LLC will convert into a Delaware corporation and change its name to Day One Biopharmaceuticals, Inc. Unless the context otherwise requires, we use the terms "Day One," "Day One LLC," "the company," "we," "us" and "our" in this prospectus to refer to Day One Biopharmaceuticals Holding Company, LLC, and the term "our common stock" to refer to Day One Biopharmaceuticals, Inc.'s common stock offered in this prospectus. We also refer to units in Day One LLC as "shares" throughout this prospectus.*

## Overview

Day One was founded to address a critical unmet need: children with cancer are being left behind in a cancer drug development revolution. Our name was inspired by the "The Day One Talk" that physicians have with patients and their families about an initial cancer diagnosis and treatment plan. We aim to re-envision cancer drug development and redefine what's possible for all people living with cancer—regardless of age—starting from Day One.

We are a clinical-stage biopharmaceutical company dedicated to developing and commercializing targeted therapies for patients of all ages with genetically defined cancers. Initially, we focus our clinical development efforts on pediatric patients living with cancer, a vulnerable population that has been underserved in the recent revolution in targeted therapeutics and immuno-oncology. Our lead product candidate, DAY101, is an oral, brain-penetrant, highly-selective type II pan-rapidly accelerated fibrosarcoma, or pan-RAF, kinase inhibitor. DAY101 has been studied in over 250 patients and has been shown to be well-tolerated as a monotherapy. DAY101 has demonstrated encouraging anti-tumor activity in pediatric and adult populations with specific genetic alterations that result in the over-activation of the RAS/mitogen-activated protein kinase, or MAPK, pathway leading to uncontrolled cell growth. We have initiated a pivotal Phase 2 (FIREFLY-1) trial of DAY101 for pediatric patients with relapsed or progressive low-grade glioma, or pLGG, the most common brain tumor diagnosed in children, for which there are no approved therapies and no standard of care. We expect to dose the first patient in this trial in the second quarter of 2021, to report initial data from this trial in the first half of 2022 and to file a related New Drug Application, or NDA, with the U.S. Food and Drug Administration, or the FDA, in 2023. DAY101 has been granted Breakthrough Therapy designation by the FDA for the treatment of pLGG, based on initial results from a Phase 1 trial which showed evidence of rapid anti-tumor activity, a greater than 50% monotherapy response rate and durable responses in pLGG patients. We also plan to study DAY101 alone or in combination with additional agents that target other key signaling nodes in the MAPK pathway in patient populations where various genetic alterations are believed to play an important role in driving disease.

Our second product candidate, pimasertib, is an oral, highly-selective small molecule inhibitor of mitogen-activated protein kinase kinases 1 and 2 (MEK), a well-characterized key signaling node in the MAPK pathway. We expect to initiate a Phase 1b/2 trial in the first quarter of 2022 to study the combination of DAY101

and pimasertib in patients 12 years and older with various MAPK-altered tumors. We believe our business development capabilities combined with our extensive experience in oncology drug development and deep ties within the research and patient advocacy communities, particularly within the pediatric setting, positions us to be a leader in identifying, acquiring and developing therapies for patients of all ages. We hold exclusive worldwide rights to DAY101 for all oncology indications and to pimasertib for all therapeutic areas subject to certain milestone and royalty payments. For additional information, see the section titled "Business—Material agreements."

***Clear unmet need in pediatric oncology***

Each year, approximately 15,500 children under the age of 18 in the United States and 300,000 globally are diagnosed with cancer. Moreover, cancer remains the most common cause of death by disease for children in the United States, accounting for over 1,700 deaths per year. Despite the need for safer and more effective therapies for childhood cancers, new drugs for pediatric patients are rare. Of the 117 non-hormonal oncology drugs approved by the FDA between 1997 and 2017, only six had an initial approval that included children. Generally, medicinal product testing in children is deferred until trials in adults reach late-stage clinical development. As a result, the first pediatric trials of an oncology product candidate usually initiate about six years after an initial clinical trial in adults.

In addition, the generation of large scale molecular profiling datasets necessary to define addressable subpopulations in pediatric oncology has occurred relatively recently. Advances in our understanding of pediatric cancer biology have revealed patient populations with druggable genetic alterations. Our management team, which has significant pediatric oncology drug development experience, believes targeted therapies, such as DAY101, have the potential to be studied in children sooner in order to address the large unmet need in pediatric cancers where new agents that address the specific genetic drivers of a tumor can meaningfully improve long-term prognosis.

***Our approach: prioritize pediatric cancer and other areas of high unmet need***

Our team’s extensive capabilities and experience in pediatric oncology, and our relationships across all key stakeholders in the pediatric medical community enable us to effectively navigate the challenges and nuances of pediatric drug development. We understand that clinical development in children cannot and should not simply be viewed as clinical development in small adults. We leverage our unique expertise to focus our initial development efforts on pediatric patients, given the potential for favorable regulatory pathways, namely Breakthrough Therapy and Orphan Drug designations.

We are driven to help children and their families fight cancer while also addressing longstanding unmet medical needs. We believe there are a number of unique advantages to developing new oncology product candidates in pediatric patients:

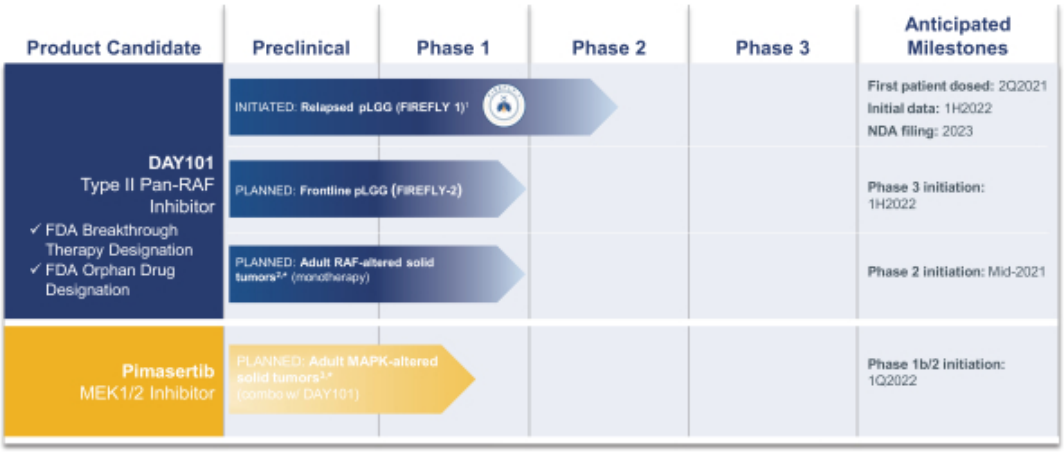
- *Enriched responder populations.* Many pediatric tumors are less heterogeneous and genomically more stable compared to highly heterogeneous adult tumors. Genetic alterations found in pediatric tumors are often primary driver oncogenic mutations. Directly targeting these mutations may lead to deep and sustained anti-tumor activity.
- *Ability to efficiently advance clinical development.* Global regulatory authorities have established paths for accelerated feedback on the design and execution of clinical trials in pediatrics. Furthermore, the potential to achieve proof-of-concept and regulatory approval can be obtained with relatively smaller-sized clinical trials with clear endpoints.

- *Regulatory and commercial tailwinds.* The scarcity of approved products or an established standard-of-care in pediatric oncology provides multiple opportunities to bring new therapeutics to market. Passionate patient advocacy groups and investigators have the potential to accelerate the uptake of therapies, if approved.

We believe we are a leader in this development space and to further this position, we plan to continue to consult and strategically partner with biopharmaceutical companies, academic pediatric oncologists and scientists, and patient advocacy groups to identify areas of unmet need in pediatric oncology and then acquire high-impact assets to address these underserved patients. While our initial focus is on pediatric patients, we also pursue the clinical development of targeted therapies with equivalent intensity for adult populations to bring benefit to patients of all ages.

***Our product candidates***

We seek to identify, acquire and develop product candidates that target high-value oncogenic drivers in cancers with high unmet need, with an initial focus on pediatric patients. The following table summarizes our product candidate pipeline.




* Includes patients [3] 12 years of age
1 *Pivotal Phase 2 trial expected to support registration*
2 *DAY101 adult monotherapy Phase 1 dose escalation and expansion trial previously completed*
3 *Pimasertib Phase 1 dose escalation and expansion trial previously completed*

Our lead product candidate, DAY101, is an oral, brain-penetrant, highly-selective type II pan-RAF kinase inhibitor that inhibits both monomeric and dimeric RAF kinase. Approved BRAF products such as vemurafenib and encorafenib are referred to as type I RAF inhibitors, which only inhibit RAF monomers and are therefore limited to use in BRAF V600-altered tumors. Unlike type I RAF inhibitors, DAY101 has not been shown to cause paradoxical activation in RAF wild-type cells at clinically active doses—a phenomenon wherein undesired increases in MAPK signaling can lead to renewed tumor growth. DAY101's inhibition of both RAF monomers and dimers broadens its potential clinical application to treat an array of RAS- or RAF-altered tumors. Furthermore, studies have shown DAY101 has higher brain penetration, distribution and exposure in comparison to other MAPK pathway inhibitors. Taken together, we believe that DAY101 has the potential to be an important therapeutic for pLGG, where over half of these brain tumors are driven by abnormal MAPK signaling due to RAF alterations.

This rationale served as the basis on which researchers at Dana-Farber Cancer Institute initiated the development of DAY101 in pLGG. In a Phase 1 dose-escalation study, nine pediatric patients (<18 years of age) with relapsed pLGG were treated with DAY101. Of the eight patients with RAF fusions, two achieved a complete response by Response Assessment for Neuro-Oncology, or RANO, criteria, three had a partial response, two achieved prolonged stable disease, and one experienced progressive disease as assessed by an independent radiographic review. The median time to achieve a response was 10.5 weeks, which was a notable observation given pLGG is an indolent, slow-growing tumor. In addition to the rapid anti-tumor activity observed, DAY101 was also well-tolerated, which is important for achieving and maintaining long-term, durable responses in these patients. Based on these results, DAY101 has been granted Breakthrough Therapy designation by the FDA for the treatment of pediatric patients with pLGG harboring an activating RAF alteration who require systemic therapy and who have either progressed following prior treatment or who have no satisfactory alternative treatment options. DAY101 also received Orphan Drug designation from the FDA for the treatment of malignant glioma. We have initiated a pivotal Phase 2 trial (FIREFLY-1) with DAY101 in pediatric patients with pLGG with a known activating BRAF alteration. We believe this trial is pivotal based on preliminary discussions with regulatory agencies. We expect to dose the first patient in this trial in the second quarter of 2021, to report initial data from this trial in the first half of 2022, and to file a related NDA with the FDA in 2023. We anticipate expanding the scope of patients that can potentially be treated with DAY101 by initiating a Phase 3 clinical trial (FIREFLY-2)_ of DAY101 as a frontline therapy in pLGG in the first half of 2022.

In addition, we plan to initiate a Phase 2 trial of DAY101 in patients 12 years and older with RAF—altered solid tumors. In order to potentially drive deeper and more durable responses, we also plan to explore combinations with other agents targeting critical signaling nodes in the MAPK pathway. One such agent is pimasertib, our orally-available, highly-selective small molecule inhibitor of MEK, a protein kinase that is immediately downstream of RAF, and we expect to initiate a Phase 1b/2 trial in the first quarter of 2022 to study the combination of DAY101 and pimasertib in patients 12 years and older with various MAPK-altered tumors. Pimasertib has been studied in more than 10 Phase 1/2 clinical trials in over 850 patients with various tumor types. Several MEK inhibitors have received regulatory approval for use in combination with type I RAF inhibitors in BRAF V600 mutant tumors. Preclinical studies indicate that the potential benefit of combining a MEK inhibitor with a type II RAF inhibitor may be even greater due to the lack of the paradoxical effects of type II inhibitors on downstream signaling. DAY101's ability to selectively inhibit both RAF monomers and dimers may broaden its potential clinical application in combination with MEK inhibition in solid tumors driven by RAS alterations, non-BRAF V600 mutations, and RAF fusions.

***Our team***

We have assembled a leadership team with a proven track record of success in building biopharmaceutical companies, and a team of drug developers with unique experience and capabilities in pediatric drug development. Our Chief Executive Officer, Jeremy Bender, Ph.D., M.B.A., brings more than 15 years of biopharmaceutical leadership experience to the company. He previously served as Vice President of Corporate Development at Gilead Sciences where he led the team responsible for Gilead's acquisitions, partnerships, and equity investments and oversaw more than 40 transactions exceeding $10 billion in upfront deal value, including the acquisition of Forty Seven, Inc. Samuel Blackman, M.D., Ph.D., our co-founder and Chief Medical Officer is a physician-scientist trained in pediatric hematology/oncology and neuro-oncology, and has led the early clinical development of more than ten novel cancer therapeutics and was responsible for the pediatric development of dabrafenib, resulting in the first industry-sponsored pediatric oncology "basket trial". Charles York II, M.B.A., our Chief Operating and Financial Officer, previously served as Chief Financial Officer and head of corporate development at Aeglea BioTherapeutics, and as Consulting CFO at Bridgepoint Consulting, and has

more than 20 years of strategic capital formation and leadership experience. Lisa Bowers, our Chief Commercial Officer, previously had pivotal roles in managing several national market access functions including serving as VP of the North American Supply Chain at Genentech and managing its $400 million cystic fibrosis franchise and its $20 billion North American drug supply chain, and served as CEO of Rhia Ventures and COO of the Tara Health Foundation. Davy Chiodin, Ph.D., our Chief Development Officer has over 15 years of experience in both adult and pediatric oncology drug development including the development of acalabrutinib at Acerta, now AstraZeneca, and served as Global Regulatory Leader, Pediatric Oncology, at Roche/Genentech. Mike Preigh, Ph.D., our Chief of Technology Operations, has over 25 years of experience in product development including serving as the Head of CMC at Array for over 10 years, filing over 20 Investigational New Drug Applications, or INDs, and supporting the development of marketed drugs including binimetinib and tucatinib.

We are supported by our board of directors, scientific advisors and a leading syndicate of investors, which includes Access Biotechnology, Atlas Venture, Boxer Capital, BVF Partners L.P., Canaan, Franklin Templeton, Janus Henderson Investors, Perceptive Advisors, RA Capital Management, funds and accounts advised by T. Rowe Price Associates, Inc., and Viking Global Investors.

## Our strategy

We have a mission-driven strategy to build a differentiated, global biopharmaceutical company through the identification, development and commercialization of therapeutics that address underserved patient populations, with an initial focus on pediatric patients. The key elements of our strategy are to:

- Establish a leadership position in targeted oncology therapeutics for patients of all ages through our unique expertise in pediatrics;
- Advance our lead product candidate, DAY101, through clinical development towards regulatory approval in pLGG;
- Maximize the therapeutic potential for DAY101 by targeting other tumors with various unaddressed MAPK alterations, including in adults, both as a monotherapy and in combination with our second product candidate, pimasertib;
- Deploy our differentiated and proven business development expertise to further expand our targeted oncology pipeline for patients with large unmet medical needs; and
- Evaluate opportunities to accelerate development timelines and enhance the commercial potential of our programs in collaboration with third parties.

## Risks factor summary

Our business is subject to a number of risks, including risks that may prevent us from achieving our business objectives or may adversely affect our business, financial condition, results of operations, cash flows and prospects that you should consider before making a decision to invest in our common stock. These risks are discussed more fully in the section titled “Risk factors” beginning on page 14 of this prospectus, and include the following:

- We have a limited operating history, have not completed any clinical trials beyond Phase 1, have no products approved for commercial sale and have not generated any revenue, which may make it difficult for investors to evaluate our current business and likelihood of success and viability.

- We have incurred significant net losses since our inception and have not generated any revenue. We expect to incur continued losses for the foreseeable future and may never achieve or maintain profitability.
- Our ability to generate revenue and achieve profitability depends significantly on our ability to achieve several objectives relating to the discovery or identification, development and commercialization of our product candidates.
- Even if this offering is successful, we will require substantial additional capital to finance our operations and achieve our goals. If we are unable to raise capital when needed or on terms acceptable to us, we may be forced to delay, reduce or eliminate our research or product development programs, any future commercialization efforts or other operations.
- We are substantially dependent on the success of our lead product candidate, DAY101, which is currently in clinical development and which has not completed a pivotal trial.
- Clinical trials are very expensive, time-consuming and difficult to design and implement, and involve uncertain outcomes. Furthermore, results of earlier preclinical studies and clinical trials may not be predictive of results of future preclinical studies or clinical trials. Our product candidates may not have favorable results in later clinical trials, if any, or receive regulatory approval.
- We expect to rely on data from an investigator-initiated trial Phase 1 clinical trial in our regulatory filings and we do not control the trial operations or reporting of the results.
- If we fail to demonstrate safety and efficacy to our stakeholders, our reputation may be harmed and our business will suffer.
- The COVID-19 pandemic could adversely impact our business, including our clinical trials and clinical trial operations.
- The development and commercialization of pharmaceutical products are subject to extensive regulation, and we may not obtain regulatory approvals for DAY101, pimasertib or any future product candidates, on a timely basis or at all.
- The manufacture of our product candidates is complex. Our third-party manufacturers may encounter difficulties in production, which could delay or entirely halt their ability to supply our product candidates for clinical trials or, if approved, for commercial sale.
- Our future success depends on our ability to retain our executive officers and key employees and to attract, retain and motivate qualified personnel and manage our human capital.
- We will need to grow the size and capabilities of our organization, and we may experience difficulties in managing this growth.
- If we are unable to obtain and maintain patent protection or other necessary rights for our products and technology, or if the scope of the patent protection obtained is not sufficiently broad or our rights under licensed patents is not sufficiently broad, our competitors could develop and commercialize products and technology similar or identical to ours, and our ability to successfully commercialize our products and technology may be adversely affected.

## Corporate information

We were formed as a limited liability company under the laws of the State of Delaware in November 2018, under the name Hero Therapeutics Holding Company, LLC. We subsequently changed our name to Day One

Therapeutics Holding Company, LLC in December 2018 and to Day One Biopharmaceuticals Holding Company, LLC in March 2020. Our principal executive offices are located at 395 Oyster Point Blvd., Suite 217, South San Francisco, CA 94080, and our telephone number is (650) 484-0899. Our website address is www.dayonebio.com. The information contained on, or that can be accessed through, our website is not part of, and is not incorporated by reference into, this prospectus. We have included our website address in this prospectus solely as an inactive textual reference. Investors should not rely on any such information in deciding whether to purchase our common stock.

Prior to the effectiveness of the registration statement of which this prospectus forms a part, Day One LLC will convert into a Delaware corporation and change its name to Day One Biopharmaceuticals, Inc. We refer to this conversion throughout the prospectus included in this registration statement as the "Conversion." As a result of the Conversion, the members of Day One LLC will become holders of shares of stock of Day One Biopharmaceuticals, Inc. For additional detail see the section of this prospectus titled "Conversion."

We use various trademarks and trade names in our business, including, without limitation, our corporate name and logo. All other service marks, trademarks and trade names appearing in this prospectus are the property of their respective owners. Solely for convenience, the trademarks and tradenames referred to in this prospectus appear without the ® and ™ symbols, but those references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights, or the right of the applicable licensor to these trademarks and tradenames.

## Implications of being an emerging growth company and a smaller reporting company

As a company with less than $1.07 billion in revenue during our last fiscal year, we qualify as an "emerging growth company" as defined in the Jumpstart Our Business Startups Act of 2012, or JOBS Act. An emerging growth company may take advantage of reduced reporting requirements that are otherwise applicable to public companies. These provisions include, but are not limited to:

- being permitted to present only two years of audited financial statements and only two years of related "Management's discussion and analysis of financial condition and results of operations" disclosure in our periodic reports and registration statements, including this prospectus;
- not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, as amended, on the effectiveness of our internal controls over financial reporting;
- reduced disclosure obligations regarding executive compensation arrangements in our periodic reports, proxy statements and registration statements, including this prospectus; and
- exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

We will remain an emerging growth company until the earliest to occur of: (i) the last day of the fiscal year in which we have more than $1.07 billion in annual revenue; (ii) the date we qualify as a "large accelerated filer," with at least $700 million of equity securities held by non-affiliates; (iii) the date on which we have issued, in any three-year period, more than $1.0 billion in non-convertible debt securities; and (iv) the last day of the fiscal year ending after the fifth anniversary of the completion of this offering.

We have elected to take advantage of certain of the reduced disclosure obligations in the registration statement of which this prospectus is a part and may elect to take advantage of other reduced reporting requirements in future filings. As a result, the information that we provide to our stockholders may be different than you might receive from other public reporting companies in which you hold equity interests.

Under the JOBS Act, emerging growth companies can also delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. We have elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date we (i) are no longer an emerging growth company or (ii) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, our consolidated financial statements may not be comparable to companies that comply with new or revised accounting pronouncements as of public company effective dates.

We are also a “smaller reporting company,” meaning that the market value of our stock held by non-affiliates plus the proposed aggregate amount of gross proceeds to us as a result of this offering is less than $700.0 million and our annual revenue is less than $100.0 million during the most recently completed fiscal year. We may continue to be a smaller reporting company after this offering if either (i) the market value of our stock held by non-affiliates is less than $250.0 million or (ii) our annual revenue is less than $100.0 million during the most recently completed fiscal year and the market value of our stock held by non-affiliates is less than $700.0 million. If we are a smaller reporting company at the time we cease to be an emerging growth company, we may continue to rely on exemptions from certain disclosure requirements that are available to smaller reporting companies. Specifically, as a smaller reporting company we may choose to present only the two most recent fiscal years of audited financial statements in our Annual Report on Form 10-K and, similar to emerging growth companies, smaller reporting companies have reduced disclosure obligations regarding executive compensation.

# The offering

| | |
|---|---|
| **Common stock offered by us** | shares. |
| **Option to purchase additional shares** | We have granted the underwriters an option for a period of 30 days to purchase up to additional shares of our common stock. |
| **Common stock to be outstanding immediately after this offering** | shares (or shares, if the underwriters exercise their option to purchase additional shares in full). |
| **Use of proceeds** | We estimate that the net proceeds from this offering will be approximately $ million (or approximately $ million if the underwriters exercise their option to purchase additional shares in full), based upon the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.<br><br>We intend to use the net proceeds from this offering, together with our existing cash and cash equivalents, to (i) advance the continued development of DAY101 in our pivotal Phase 2 clinical trial as a monotherapy for pediatric patients with pLGG (FIREFLY-1), in a Phase 3 clinical trial (FIREFLY-2) as a potential frontline therapy in pLGG, and in a Phase 2 clinical trial in adult RAS/RAF-altered solid tumors, (ii) advance the development of a Phase 1b/2 clinical trial of DAY101 in combination with pimasertib in adult MAPK-altered solid tumors, fund further development or acquisitions of future preclinical and clinical programs towards IND filings and/or into clinical trials; and (iii) the remainder to fund pre-commercialization activities for DAY101, working capital and other general corporate purposes. See the section titled “Use of proceeds” for more information. |
| **Risk factors** | See the section titled “Risk factors” for a discussion of factors that you should consider carefully before deciding to invest in shares of our common stock. |
| **Directed share program** | At our request, the underwriters have reserved up to 5% of the shares offered by this prospectus for sale at the initial public offering price to certain individuals through a directed share program, including our directors, officers, employees, business associates and related persons. The sales will be made at our direction by J.P. Morgan Securities LLC and its affiliates through a directed share program. The number of shares of our common stock available for sale to the general public in this offering will be reduced to the extent that such persons purchase such reserved |

| | |
|---|---|
| | shares. Any reserved shares not so purchased will be offered by the underwriters to the general public on the same terms as the other shares of our common stock offered by this prospectus. See the section titled "Underwriting" for additional information. |
| **Proposed Nasdaq trading symbol** | "DAWN" |

The number of shares of our common stock to be outstanding after this offering is based on 21,497,645 shares of our common stock outstanding as of March 31, 2021, after giving effect to:

- the Conversion (including, in connection therewith, the issuance of (i) 2,596,073 shares of common stock to holders of common shares of Day One LLC, which includes 20,841 shares of unvested restricted common stock, and (ii) 2,144,673 shares of common stock to holders of incentive shares of Day One LLC, which includes 1,859,939 shares of unvested restricted common stock; in each case assuming such common shares and incentive shares of Day One LLC convert at a rate of one share of our common stock for each common share or incentive share);
- the automatic conversion of all outstanding shares of our convertible preferred stock issued in the Conversion into an aggregate of 13,973,939 shares of our common stock immediately prior to the completion of this offering; and
- the issuance of 2,782,960 shares of our common stock to Millennium Pharmaceuticals, Inc. in exchange for 9,857,143 shares of Series A redeemable convertible preferred stock of DOT Therapeutics-1, Inc., our subsidiary, pursuant to the Millennium Stock Exchange Agreement and the Plan of Conversion, pursuant to and contingent upon the effectiveness of the Conversion and subject to the satisfaction of the other terms and conditions of the Millennium Stock Exchange Agreement.

The number of shares of our common stock to be outstanding after this offering excludes:

- shares of common stock reserved for future issuance as of March 31, 2021 under our stock-based compensation plans, consisting of (i) shares of common stock reserved for future issuance under our 2021 Equity Incentive Plan, or the 2021 Plan, which will become effective on the day before the date of the effectiveness of the registration statement of which this prospectus forms a part and (ii) shares of common stock reserved for future issuance under our 2021 Employee Stock Purchase Plan, or the ESPP, which will become effective on the date of the effectiveness of the registration statement of which this prospectus forms a part. Our 2021 Plan and ESPP also provide for automatic annual increases in the number of shares reserved under the plans each year, as more fully described in "Executive Compensation—Equity Compensation Plans and Other Benefit Plans."

Except as otherwise indicated, all information in this prospectus assumes or gives effect to:

- that the Conversion has occurred, including giving effect to the conversion of all outstanding incentive shares into an aggregate of shares of our common stock in connection with the Conversion, based on an assumed fair value of $ per common share, which is the midpoint of the price range per share set forth on the cover page of this prospectus;
- the automatic conversion of all outstanding shares of our convertible preferred stock issued in the Conversion into an aggregate of shares of our common stock immediately prior to the completion of this offering;
- a -for- forward split of our capital stock, which which was effected on , 2021;

- the filing and effectiveness of our amended and restated certificate of incorporation and the adoption of our amended and restated bylaws, each of which occur immediately prior to the completion of this offering;
- no exercise of the underwriters' option to purchase additional shares of our common stock; and
- the issuance of 2,782,960 shares of our common stock to Millennium Pharmaceuticals, Inc. in exchange for 9,857,143 shares of Series A redeemable convertible preferred stock of DOT Therapeutics-1, Inc., our subsidiary, pursuant to the Millennium Stock Exchange Agreement and the Plan of Conversion, pursuant to and contingent upon the effectiveness of the Conversion and subject to the satisfaction of the other terms and conditions of the Millennium Stock Exchange Agreement.

## Summary consolidated financial data

The following tables present the summary consolidated financial data for Day One LLC and its consolidated subsidiaries. The summary statement of operations and comprehensive loss data presented below for the years ended December 31, 2019 and 2020 are derived from our audited consolidated financial statements included elsewhere in this prospectus. The summary statement of operations and comprehensive loss data presented below for the three months ended March 31, 2020 and 2021 are derived from our unaudited interim condensed consolidated financial statements included elsewhere in this prospectus. Our unaudited interim condensed consolidated financial statements were prepared on the same basis as our audited consolidated financial statements and, in our opinion, reflect all adjustments, consisting only of normal recurring adjustments, that are necessary for the fair statement of our interim condensed consolidated financial statements. The following summary consolidated financial data should be read in conjunction with "Selected consolidated financial data," "Management's discussion and analysis of financial condition and results of operations" and our consolidated financial statements and related notes included elsewhere in this prospectus. Our historical results are not necessarily indicative of the results that may be expected in any future period. The summary consolidated financial data in this section are not intended to replace our consolidated financial statements and are qualified in their entirety by the consolidated financial statements and related notes included elsewhere in this prospectus.

| | Year ended December 31, | | Three months ended March 31, | |
|---|---|---|---|---|
| | 2019 | 2020 | 2020 | 2021 |
| **(in thousands, except share and per share data)** | | | (unaudited) | |
| **Consolidated statements of operations and comprehensive loss data:** | | | | |
| **Operating expenses** | | | | |
| Research and development | $ 13,899 | $ 9,100 | $ 961 | $ 12,632 |
| General and administrative | 1,006 | 4,682 | 808 | 3,454 |
| **Total operating expenses** | 14,905 | 13,782 | 1,769 | 16,086 |
| **Loss from operations** | (14,905) | (13,782) | (1,769) | (16,086) |
| Interest expense | (2,077) | (30) | (3) | (7) |
| Other expense | (2) | (31) | (2) | (8) |
| Changes in fair value of derivative tranches liability | — | (30,000) | (218) | — |
| **Net loss and comprehensive loss** | (16,984) | (43,843) | (1,992) | (16,101) |
| Net loss attributable to redeemable convertible noncontrolling interests | (4,350) | (3,336) | (457) | (919) |
| Net loss attributable to Day One Biopharmaceuticals Holding Company, LLC members | $ (12,634) | $ (40,507) | $ (1,535) | $ (15,182) |
| Net loss per share, basic and diluted | $ (4.96) | $ (17.03) | $ (0.67) | $ (5.99) |
| Weighted-average number of common shares used in computing net loss per share, basic and diluted | 2,548,230 | 2,378,286 | 2,284,257 | 2,534,260 |
| Unaudited pro forma net loss per share attributable to Day One Biopharmaceuticals Holding Company, LLC, basic and diluted (1) | | $ (1.25) | | $ (0.89) |
| Unaudited pro forma weighted-average number of shares used in computing net loss per share, basic and diluted (1) | | 11,031,632 | | 18,078,422 |

(1) See the section titled "Management's discussion and analysis of financial conditions and results of operations—Unaudited pro forma information" for an explanation of the calculation of our basic and diluted pro forma net loss per share, and the weighted-average number of shares outstanding used in the computation of the per share amounts.

| (in thousands) | As of March 31, 2021 | | |
|---|---|---|---|
| | Actual | Pro forma[1] (unaudited) | Pro forma as adjusted[2] |
| **Consolidated balance sheet data:** | | | |
| Cash and cash equivalents | $154,870 | $ 154,870 | $ |
| Working capital[3] | 155,689 | 155,689 | |
| Total assets | 160,880 | 160,880 | |
| Redeemable convertible preferred shares | 221,721 | — | |
| Redeemable convertible noncontrolling interest | 4,783 | — | |
| Total members'/shareholders' (deficit) equity | (68,849) | 157,655 | |

(1) The consolidated pro forma balance sheet data gives effect to (i) the Conversion, (ii) the automatic conversion of all outstanding shares of our convertible preferred stock issued in the Conversion into an aggregate of 13,973,939 shares of our common stock immediately prior to the closing of this offering, (iii) the issuance of 2,782,960 shares of common stock to Millennium Pharmaceuticals, Inc. in exchange for 9,857,143 shares of Series A redeemable convertible preferred stock of DOT Therapeutics-1, Inc., our subsidiary, pursuant to the Millennium Stock Exchange Agreement and the Plan of Conversion, pursuant to and contingent upon the effectiveness of the Conversion and subject to the satisfaction of the other terms and conditions of the Millennium Stock Exchange Agreement and (iv) the filing and effectiveness of our restated certificate of incorporation upon the closing of this offering.

(2) The pro forma as adjusted combined and consolidated balance sheet data gives effect to the pro forma adjustments set forth in footnote (1) above and our issuance and sale of shares of our common stock offered in this offering at an assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. The pro forma as adjusted information set forth in the table below is illustrative only and will be adjusted based on the actual initial public offering price and other terms of this offering as determined as pricing.

(3) We define working capital as current assets less current liabilities. See our consolidated financial statements included elsewhere in this prospectus for further details regarding our current assets and current liabilities.

Each $1.00 increase or decrease in the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, would increase or decrease, as applicable, the pro forma as adjusted amount of each of our cash and cash equivalents, working capital, total assets redeemable convertible preferred shares, redeemable convertible noncontrolling interest and total members'/shareholders' (deficit) equity by $ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase or decrease of 1.0 million shares in the number of shares offered by us as set forth on the cover page of this prospectus, would increase or decrease, as applicable, the pro forma as adjusted amount of each of cash and cash equivalents, working capital, total assets redeemable convertible preferred shares, redeemable convertible noncontrolling interest and total members'/shareholders' (deficit) equity by $ million, assuming no change in the assumed initial public offering price per share and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

# Risk factors

*Investing in our common stock is speculative and involves a high degree of risk. Investors should carefully consider the risks described below, as well as the other information in this prospectus, including our consolidated financial statements and related notes appearing elsewhere in this prospectus and the section titled "Management's discussion and analysis of financial condition and results of operations," before deciding whether to invest in our common stock. The occurrence of any of the events or developments described below could harm our business, financial condition, results of operations and growth prospects. In such an event, the market price of our common stock could decline, and investors may lose all or part of their investment. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may impair our business operations and the market price of our common stock.*

## Risks related to our financial position and need for additional capital

***We have a limited operating history, have not completed any clinical trials beyond Phase 1, have no products approved for commercial sale and have not generated any revenue, which may make it difficult for investors to evaluate our current business and likelihood of success and viability.***

We are a clinical-stage biopharmaceutical company with a limited operating history upon which you can evaluate our business and prospects. We commenced operations in 2018, have no products approved for commercial sale and have never generated any revenue. Investment in drug development is a highly speculative undertaking and involves a substantial degree of risk. To date, we have devoted substantially all of our resources to identifying, acquiring and developing our product candidates and building our pipeline, organizing and staffing our company, business planning, establishing and maintaining our intellectual property portfolio, establishing arrangements with third parties for the manufacture of our product candidates, raising capital and providing general and administrative support for these operations.

Since our inception, we have focused substantially all of our efforts and financial resources on the clinical development of our lead product candidate, DAY101, initially for relapsed or progressive low-grade gliomas, or pLGGs, and our other current product candidate, pimasertib, an orally available small molecule inhibitor of MEK kinase, which we intend to use in combination with DAY101 for the treatment of RAS and RAF-dependent tumors. To date, we have funded our operations with proceeds from sale of our convertible preferred stock and convertible notes. From inception through March 31, 2021, we received an aggregate of $188.0 million in net proceeds from sales of our convertible preferred stock and an aggregate of $2.0 million in net proceeds from sales of our convertible notes.

We have not yet demonstrated an ability to successfully complete any clinical trials beyond Phase 1, obtain marketing approvals, manufacture a commercial-scale product or arrange for a third party to do so on our behalf, or conduct sales and marketing activities necessary for successful product commercialization. As a result, it may be more difficult for you to accurately predict our likelihood of success and viability than it could be if we had a longer operating history.

In addition, we may encounter unforeseen expenses, difficulties, complications, delays and other known and unknown factors and risks frequently experienced by clinical-stage biopharmaceutical companies in rapidly evolving fields. We also may need to transition from a company with a research and development focus to a company capable of supporting commercial activities. We have not yet demonstrated an ability to successfully overcome such risks and difficulties, or to make such a transition. If we do not adequately address these risks and difficulties or successfully make such a transition, our business will suffer.

***We have incurred significant net losses since our inception and have not generated any revenue. We expect to incur continued losses for the foreseeable future and may never achieve or maintain profitability.***

We have incurred significant net losses in each reporting period since our inception, have not generated any revenue to date and have financed our operations principally through private placements of our redeemable convertible preferred shares and our convertible notes. For the years ended December 31, 2019 and 2020, we reported a net loss of $17.0 million and $43.8 million, respectively. Our net losses were $15.2 million and $1.5 million for the three months ended March 31, 2021 and 2020, respectively. We had an accumulated deficit of $72.0 million as of March 31, 2021. We expect to incur increasing levels of operating losses for the foreseeable future, particularly as we advance DAY101 and pimasertib through clinical development. Our prior losses, combined with expected future losses, have had, and will continue to have, an adverse effect on our stockholders' equity and working capital. We expect our research and development expenses to significantly increase in connection with our additional planned clinical trials for our lead product candidate and other product candidates, including our ongoing pivotal Phase 2 clinical trial for DAY101, our planned Phase 3 clinical trial (FIREFLY-2) of DAY101 as a potential frontline therapy in pLGG, our planned Phase 2 clinical trial of DAY 101 in adult RAS/RAF-altered solid tumors and our planned Phase 1b/2 trial for DAY101 and pimasertib, and development of and subsequent Investigational New Drug Applications, or INDs, for any future product candidates we may choose to pursue. In addition, if we obtain marketing approval for DAY101, pimasertib, or another product candidate, we will incur significant sales, marketing and outsourced manufacturing expenses in connection with the commercialization of DAY101, pimasertib, or such other product candidate, respectively. Once we are a public company, we will incur additional costs associated with operating as a public company.

As a result, we expect to continue to incur significant and increasing net losses for the foreseeable future. Because of the numerous risks and uncertainties associated with developing pharmaceutical products, we are unable to predict the extent of any future losses or when we will become profitable, if at all. Even if we do become profitable, we may not be able to sustain or increase our profitability on a quarterly or annual basis. In addition, we expect our financial condition and operating results to fluctuate significantly from quarter-to-quarter and year-to-year due to a variety of factors, many of which are beyond our control. Accordingly, you should not rely upon the results of any quarterly or annual periods as indications of future operating performance.

***Our ability to generate revenue and achieve profitability depends significantly on our ability to achieve several objectives relating to the discovery or identification, development and commercialization of our product candidates.***

Our business depends entirely on the successful discovery or identification, development and commercialization of product candidates. We have no products approved for commercial sale and do not anticipate generating any revenue from product sales for the next several years, if ever. We do not expect to generate significant revenue unless and until we obtain marketing approval for, and begin to sell, DAY101, pimasertib, or another product candidate. Our ability to generate revenue and achieve profitability depends on a number of factors, including, but not limited to, our ability to:

- complete a successful pivotal Phase 2 trial with DAY101 that achieves a competitive, clinically meaningful target product profile;
- initiate and complete a successful Phase 1b/2 trial of DAY101 as monotherapy and in combination with pimasertib in patients 12 years and older with tumors having activated RAF signaling;
- initiate and successfully complete all safety, pharmacokinetic and other studies required to obtain U.S. and foreign marketing approval for DAY101 as a treatment for patients with pLGGs;
- initiate and complete successful later-stage clinical trials that meet their clinical endpoints;

- obtain favorable results from our clinical trials and apply for and obtain marketing approval for DAY101 and pimasertib from applicable regulatory authorities, including New Drug Applications, or NDAs, from the U.S. Food and Drug Administration, or the FDA, and maintaining such approvals;
- establish licenses, collaborations or strategic partnerships that may increase the value of our programs;
- establish and maintain viable supply and manufacturing relationships with third parties that can provide adequate, in both amount and quality, products and services to support clinical development and meet the market demand for our product candidates, if approved;
- successfully commercialize DAY101, pimasertib, and any future product candidates we may develop, if approved, respectively, by building a sales force or entering into collaborations with third parties;
- satisfy any required post-marketing approval commitments to applicable regulatory authorities;
- maintain a continued acceptable safety profile following any marketing approval of our product candidates;
- identify, assess and develop new product candidates;
- establish and maintain patent and trade secret protection or regulatory exclusivity for our product candidates; maintain an acceptable safety profile of our products, including pimasertib;
- obtain, maintain, protect and defend our intellectual property portfolio;
- address any competing therapies and technological and market developments;
- achieve market acceptance of DAY101 or pimasertib and our other successful product candidates with patients, the medical community and third-party payors; and
- attract, hire and retain qualified personnel.

To become and remain profitable, we must succeed in designing, developing and eventually commercializing products that generate significant revenue. This will require us to be successful in a range of challenging activities, including completing clinical trials for our product candidates, designing and/or acquiring additional product candidates, establishing arrangements with third parties for the manufacture of clinical supplies of our product candidates, obtaining marketing approval for our product candidates and manufacturing, marketing and selling any products for which we may obtain marketing approval. We are in the earlier stages of most of these activities. We may never succeed in these activities and, even if we do, may never generate revenues that are significant enough to achieve profitability.

In cases where we are successful in obtaining regulatory approval to market one or more of our product candidates, our revenue will be dependent, in part, upon the size of the markets in the territories for which we gain regulatory approval, the accepted price for the product, the duration of treatment that physicians believe is appropriate for our product, the speed of physician adoption, the ability to obtain coverage and reimbursement, and whether we own the commercial rights for that territory. If the number of our addressable patients is not as significant as we estimate, the indication approved by regulatory authorities is narrower than we expect, or the treatment population is narrowed by competition, physician choice, payer decisions or treatment guidelines, we may not generate significant revenue from sales of such products, even if approved.

If we decide to or are required by the FDA or regulatory authorities in other jurisdictions to perform studies or clinical trials in addition to those currently expected, or if there are any delays in establishing appropriate manufacturing arrangements for, in initiating or completing our current and planned clinical trials for, or in the development of, any of our product candidates, our expenses could increase materially and profitability could be further delayed.

Our failure to become and remain profitable would depress the value of our company and could impair our ability to raise capital, expand our business, maintain our research and development efforts, diversify our product offerings or even continue our operations. A decline in the value of our company could also cause you to lose all or part of your investment.

***Even if this offering is successful, we will require substantial additional capital to finance our operations and achieve our goals. If we are unable to raise capital when needed or on terms acceptable to us, we may be forced to delay, reduce or eliminate our research or product development programs, any future commercialization efforts or other operations.***

Developing pharmaceutical products, including conducting preclinical studies and clinical trials, is a very time-consuming, expensive and uncertain process that takes years to complete. Our operations have consumed substantial amounts of cash since inception, and we expect our expenses to increase substantially in connection with our ongoing activities, particularly as we advance our lead product candidate, DAY101, pimasertib, and any future product candidates through clinical development. We expect increased expenses as we continue our research and development, initiate additional clinical trials seek to expand our product pipeline, and seek marketing approval for our lead programs and future product candidates and invest in our organization. In addition, if we obtain marketing approval for any of our product candidates, we expect to incur significant commercialization expenses related to product manufacturing, marketing, sales and distribution. Furthermore, upon the closing of this offering, we expect to incur additional costs associated with operating as a public company that we did not incur as a private company. Accordingly, we will need to obtain substantial additional funding in connection with our continuing operations.

Adequate additional financing may not be available to us on favorable terms, or at all. In addition, we may seek additional capital due to favorable market conditions or strategic considerations even if we believe we have sufficient funds for our current or future operating plans. If we are unable to raise capital when needed or on favorable terms, we could be forced to delay, reduce or eliminate our research and development programs, our commercialization plans or other operations.

We had $154.9 million in cash and cash equivalents as of March 31, 2021. We believe that the net proceeds from this offering, together with our existing cash, and cash equivalents, will enable us to fund our operating expenses, and capital expenditure requirements for at least the next months. We have based this estimate on assumptions that may prove to be wrong, and we could use our capital resources sooner than we currently expect. Changes beyond our control may occur that would cause us to use our available capital before that time, including changes in and progress of our drug development activities and changes in regulation. Our future capital requirements will depend on many factors, including:

- the progress, timing and results of preclinical studies and clinical trials for our current or any future product candidates;
- the extent to which we develop, in-license or acquire other pipeline product candidates or technologies;
- the number and development requirements of future product candidates that we may pursue, and other indications for our current product candidates that we may pursue;
- the costs, timing and outcome of obtaining regulatory approvals of our current or future product candidates and any companion diagnostics we may pursue;
- the scope and costs of making arrangements with third-party manufacturers, or establishing manufacturing capabilities, for both clinical and commercial supplies of our current or future product candidates;

- the costs involved in growing our organization to the size needed to allow for the research, development and potential commercialization of our current or future product candidates;
- to the extent we pursue strategic collaborations, including collaborations to commercialize DAY101, pimasertib, or any of our future pipeline product candidates, our ability to establish and maintain collaborations on favorable terms, if at all, as well as the timing and amount of any milestone or royalty payments we are required to make or are eligible to receive under such collaborations or our current licenses;
- the cost associated with commercializing any approved product candidates, including establishing sales, marketing, market access and distribution capabilities;
- the cost associated with completing any post-marketing studies or trials required by the FDA or other regulatory authorities;
- the revenue, if any, received from commercial sales of DAY101, pimasertib or any of our future product candidates if any are approved, or any future pipeline product candidates that receive marketing approval;
- the costs of preparing, filing and prosecuting patent applications, maintaining and enforcing our intellectual property rights and defending intellectual property-related claims that we may become subject to, including any litigation costs and the outcome of such litigation; and
- the costs associated with potential product liability claims, including the costs associated with obtaining insurance against such claims and with defending against such claims.

Even if this offering is successful, we will require additional capital to complete our planned clinical development programs for our current product candidates to obtain regulatory approval, and we anticipate needing to raise additional capital to complete the development of and commercialize our product candidates. Our ability to raise additional funds will depend on financial, economic and market conditions and other factors, over which we may have no or limited control. If adequate funds are not available on commercially acceptable terms when needed, we may be forced to delay, reduce or terminate the development or commercialization of all or part of our research programs or product candidates or we may be unable to take advantage of future business opportunities. Furthermore, any additional capital-raising efforts may divert our management from their day-to-day activities, which may adversely affect our ability to develop and commercialize our current and future product candidates, if approved. Changing circumstances, some of which may be beyond our control, could cause us to consume capital significantly faster than we currently anticipate, and we may need to seek additional funds sooner than planned.

We will be required to obtain further funding through public or private equity financings, debt financings, collaborative agreements, licensing arrangements or other sources of financing, which may dilute our stockholders or restrict our operating activities. We do not have any committed external source of funds. To the extent that we raise additional capital through the sale of equity or convertible debt securities, each investor’s ownership interests will be diluted, and the terms may include liquidation or other preferences that adversely affect each investor’s rights as a stockholder. Debt financing may result in imposition of debt covenants, increased fixed payment obligations or other restrictions that may affect our business. If we raise additional funds through upfront payments or milestone payments pursuant to strategic collaborations with third parties, we may have to relinquish valuable rights to our product candidates or grant licenses on terms that are not favorable to us. Our ability to raise additional funds may be adversely impacted by potential worsening global economic conditions and disruptions to and volatility in the credit and financial markets in the United States and worldwide resulting from the ongoing COVID-19 pandemic or otherwise.

Our failure to raise capital as and when needed or on acceptable terms would have a negative impact on our financial condition and our ability to pursue our business strategy, and we may have to delay, reduce the scope of, suspend or eliminate one or more of our research or drug development programs, clinical trials or future commercialization efforts.

## Risks related to development and commercialization of our product candidates

***We are substantially dependent on the success of our lead product candidate, DAY101, which is currently in clinical development and which has not completed a pivotal trial.***

Our future success is highly dependent on our ability to timely complete successful clinical trials, obtain regulatory approval for, and then successfully commercialize, our product candidates. We are early in our development efforts and our lead product candidate, DAY101, is currently in a pivotal Phase 2 clinical trial. Our other current product candidate, pimasertib, is in an earlier stage of development. We currently have no products that are approved for sale in any jurisdiction. There can be no assurance that DAY101, pimasertib or any future product candidates we develop will achieve success in their clinical trials or obtain regulatory approval.

Our ability to generate product revenue, which we do not expect will occur for many years, if ever, will depend heavily on the successful development and eventual commercialization of our lead product candidate, DAY101. The success of DAY101, will depend on several factors, including the following:

- successful and timely completion of current and future clinical trials resulting in attractive, competitive target product profiles;
- acceptance of NDAs by the FDA or other similar clinical trial applications from foreign regulatory authorities for our future clinical trials for our pipeline product candidates;
- timely and successful enrollment of patients in, and completion of, clinical trials with favorable results;
- demonstration of safety, efficacy and acceptable risk-benefit profiles of our product candidates to the satisfaction of the FDA and foreign regulatory agencies and attractive to physicians, patients, advocates, payers and caregivers;
- our ability, or that of our collaborators, to develop and obtain clearance or approval of companion diagnostics, on a timely basis, or at all, and an adequate supply of these companion diagnostics that outpaces demand;
- receipt and related terms of marketing approvals from applicable regulatory authorities, including the completion of any required post-marketing studies or trials and available funding to perform any post-marketing commitments;
- raising additional funds necessary to complete clinical development of and commercialize our product candidates;
- obtaining and maintaining patent, trade secret and other intellectual property protection and regulatory exclusivity for our product candidates;
- making arrangements with third-party manufacturers, or establishing manufacturing capabilities, for both clinical and commercial supplies of our product candidates and ensuring a resilient, effective supply chain that produces supply that outpaces demand;
- developing and implementing marketing and reimbursement strategies, as well as adequate demand forecasts for supply and sales planning;

- establishing sales, marketing and distribution capabilities and launching commercial sales of our products, if and when approved, whether alone or in collaboration with others in a market where promotional sales approaches are rapidly moving to digital platforms;
- acceptance of our products, if and when approved, by patients, the medical community and third-party payors underpinned by adequate health economic data and a meaningful value proposition;
- effectively competing with other therapies, including those that have not yet entered the market;
- obtaining and maintaining third-party payor coverage and adequate reimbursement in both public and private payor spaces;
- obtaining appropriate support from patient advocacy organizations;
- effectively shaping the market in the early years following launch to help providers understand a new way of thinking about treating these patients;
- addressing any delays in our clinical trials resulting from factors related to the COVID-19 pandemic or other major natural disaster or significant political event;
- protecting and enforcing our rights in our intellectual property portfolio; and
- maintaining a continued acceptable safety profile of the products following approval.

Many of these factors are beyond our control, and it is possible that none of our product candidates will ever obtain regulatory approval even if we expend substantial time and resources seeking such approval. If we do not achieve one or more of these factors in a timely manner or at all, we could experience significant delays or an inability to successfully commercialize our product candidates, which would materially harm our business. For example, our business could be harmed if results of our ongoing clinical trial of DAY101 do not meet the clinical endpoints, or if we are unable to initiate a Phase 1b/2 trial of DAY101 as monotherapy or in combination with pimasertib.

***Clinical trials are very expensive, time-consuming and difficult to design and implement, and involve uncertain outcomes. Furthermore, results of earlier preclinical studies and clinical trials may not be predictive of results of future preclinical studies or clinical trials. Our product candidates may not have favorable results in later clinical trials, if any, or receive regulatory approval.***

The risk of failure for our product candidates is high. It is impossible to predict when or if any of our product candidates will prove effective or safe in humans or will receive regulatory approval. To obtain the requisite regulatory approvals to market and sell any of our product candidates, we must demonstrate through extensive preclinical studies and clinical trials that our product candidates are safe and effective in humans for use in each target indication. Clinical testing is expensive and can take many years to complete, and the outcome is inherently uncertain. Failure can occur at any time during the clinical trial process.

In addition, the results of preclinical studies and earlier clinical trials may not be predictive of the results of later-stage preclinical studies or clinical trials. We have limited clinical data for our product candidates. Product candidates in later stages of clinical trials may fail to show the desired safety and efficacy traits despite having progressed through preclinical and earlier stage clinical trials.

In some instances, there can be significant variability in safety or efficacy results between different clinical trials of the same product candidate due to numerous factors, including changes in clinical trial procedures set forth in protocols, differences in the size and type of the patient populations, adherence to the dosing regimen

and other clinical trial protocols, and the rate of discontinuation among clinical trial participants. If we fail to produce positive results in our planned clinical trials of any of our product candidates, the development timeline and regulatory approval and commercialization prospects for our product candidates, and, correspondingly, our business and financial prospects, would be materially and adversely affected.

***We expect to rely on data from an investigator-initiated trial Phase 1 clinical trial in our regulatory filings and we do not control the trial operations or reporting of the results.***

DAY101's Phase 1 trial is run as investigator-initiated, multi-center trial in patients with relapsed/refractory pLGG that is being conducted by the Dana Farber Cancer Institute in collaboration with the Pacific Pediatric Neuro-Oncology Consortium, or PNOC. The last data reported from this trial was in January 2020. It is possible that additional data, when reported, will not demonstrate similar results. We have no control over the timing of such clinical data announcements. In addition, although we expect that our pivotal Phase 2 trial in pLGG will provide a sufficient dataset to support approval with only 60 patients based on preliminary discussions with regulatory agencies, we cannot assure you that the FDA will not require data from additional patients to support approval. In later-stage clinical trials, we will likely be subject to more rigorous statistical analyses than in completed earlier stage clinical trials. A number of companies in the pharmaceutical industry have suffered significant setbacks in later-stage clinical trials due to lack of efficacy or adverse safety profiles, notwithstanding promising results in earlier trials, and we cannot be certain that we will not face similar setbacks. Moreover, preclinical and clinical data are often susceptible to varying interpretations and analyses, and many companies that have believed their product candidates performed satisfactorily in preclinical studies and clinical trials have nonetheless failed to obtain marketing approval of their products.

Furthermore, we do not control the design or administration of investigator-sponsored trials, nor the submission or approval of any IND or foreign equivalent required to conduct these trials, and the investigator-sponsored trials could, depending on the actions of such third parties, jeopardize the validity of the clinical data generated, identify significant concerns with respect to our product candidates that could impact our findings or clinical trials, and adversely affect our ability to obtain marketing approval from the FDA or other applicable regulatory authorities. To the extent the results of this or other investigator-sponsored trials are inconsistent with, or different from, the results of our planned company-sponsored trials or raise concerns regarding our product candidates, the FDA or a foreign regulatory authority may question the results of the company-sponsored trial, or subject such results to greater scrutiny than it otherwise would. In these circumstances, the FDA or such foreign regulatory authorities may require us to obtain and submit additional clinical data, which could delay clinical development or marketing approval of our product candidates. In addition, while investigator-sponsored initiated trials could be useful to inform our own clinical development efforts, there is no guarantee that we will be able to use the data from these trials to form the basis for regulatory approval of our product candidates.

***Our clinical trials may fail to adequately demonstrate the safety and efficacy of any of our product candidates, which would prevent or delay development, regulatory approval and commercialization.***

Before obtaining marketing approval from the FDA or comparable foreign regulatory authorities for the sale of our current product candidates, we must demonstrate through lengthy, complex and expensive clinical trials that our product candidates are both safe and effective for use in each target indication. Clinical testing is expensive, difficult to design and implement, can take many years to complete and its ultimate outcome is uncertain. Failure can occur at any time during the clinical trial processes, and, because our product candidates are in earlier stages of development, there is a high risk of failure and we may never succeed in developing marketable products.

We may experience numerous unforeseen events during, or as a result of, clinical trials that could delay or prevent receipt of marketing approval or our ability to commercialize our product candidates, including:

- failure of our product candidates in clinical trials to demonstrate safety and efficacy;
- failure of our product candidates in clinical trials to demonstrate important functional, quality, or patient-reported outcomes;
- receipt of feedback from regulatory authorities that requires us to modify the design of our clinical trials;
- negative or inconclusive clinical trial results that may require us to conduct additional clinical trials or abandon certain research and/or drug development programs;
- the number of patients required for clinical trials being larger than anticipated, enrollment in these clinical trials being slower than anticipated or participants dropping out of these clinical trials at a higher rate than anticipated;
- third-party contractors failing to comply with regulatory requirements or meet their contractual obligations to us in a timely manner, or at all;
- the suspension or termination of our clinical trials for various reasons, including non-compliance with regulatory requirements or a finding that our product candidates have undesirable side effects or other unexpected characteristics or risks;
- the cost of clinical trials of our product candidates being greater than anticipated;
- the supply or quality of our product candidates or other materials necessary to conduct clinical trials of our product candidates being insufficient or inadequate; and
- regulators revising the requirements for approving our product candidates.

If we are required to conduct additional clinical trials or other testing of our product candidates beyond those that we currently contemplate, if we are unable to successfully complete clinical trials of our product candidates or other testing in a timely manner, if the results of these trials or tests are not positive or are only modestly positive or if there are safety concerns, we may incur unplanned costs, be delayed in seeking and obtaining marketing approval, if we receive such approval at all, receive more limited or restrictive marketing approval, be subject to additional post-marketing testing requirements or have the drug removed from the market after obtaining marketing approval.

Our product candidates are initially targeted towards the pediatric population, for which safety concerns may be particularly scrutinized by regulatory agencies. Trials involving pediatric populations can be difficult to conduct, can be quite costly and, like other clinical trials, may not yield the anticipated results. In addition, pediatric studies are more dependent on a smaller number of specialized clinical trial sites, which in turn can limit site availability and make the trials more expensive to conduct. In addition, as interest in pediatric indications grows as a result of the RACE Act and other market forces, trial recruitment may become even more difficult due to competition for eligible patients. Moreover, it may be challenging to ensure that pediatric or adolescent patients adhere to clinical trial protocols. Our inability to enroll a sufficient number of pediatric patients for our clinical trial could result in significant delays, could require us to abandon one or more clinical trials altogether, could impact our ability to raise additional capital and could delay or prevent our ability to obtain necessary regulatory approvals for any drug product candidate.

Additionally, if the results of our clinical trials are inconclusive or if there are safety concerns or serious adverse events associated with our product candidates, we may:

- be delayed in obtaining marketing approval, if at all;

- obtain approval for indications or patient populations that are not as broad as intended or desired or may have restricted duration expectations or guidance;
- obtain approval with labeling that includes significant use or distribution restrictions or safety warnings;
- be subject to additional post-marketing testing requirements;
- be required to perform additional clinical trials to support approval or be subject to additional post-marketing testing requirements;
- have regulatory authorities withdraw, or suspend, their approval of the drug or impose restrictions on its distribution in the form of a modified risk evaluation and mitigation strategy, or REMS;
- be subject to the addition of labeling statements, such as warnings or contraindications;
- be sued; or
- experience damage to our reputation.

Our drug development costs will also increase if we experience delays in testing or obtaining marketing approvals. Also, delays in obtaining marketing approval may increase commercialization costs if the competitive environment becomes more intense prior to market entry. We do not know whether any of our preclinical studies or clinical trials will begin as planned, need to be restructured or be completed on schedule, if at all.

Further, we, the FDA or an institutional review board, or IRB, may suspend our clinical trials at any time if it appears that we or our collaborators are failing to conduct a trial in accordance with regulatory requirements, including the FDA's current Good Clinical Practice, or GCP, regulations, that we are exposing participants to unacceptable health risks, or if the FDA finds deficiencies in our investigational NDAs or the conduct of these trials. Therefore, we cannot predict with any certainty the schedule for commencement and completion of future clinical trials. Further, conducting clinical trials in foreign countries, as we may do for our product candidates, presents additional risks that may delay completion of our clinical trials. These risks include the failure of enrolled patients in foreign countries to adhere to clinical protocol as a result of differences in healthcare services or cultural customs, managing additional administrative burdens associated with foreign regulatory schemes, as well as political and economic risks relevant to such foreign countries.

Moreover, principal investigators for our clinical trials may serve as scientific advisors or consultants to us from time to time and receive compensation in connection with such services. Under certain circumstances, we may be required to report some of these relationships to the FDA or comparable foreign regulatory authorities. The FDA or comparable foreign regulatory authority may conclude that a financial relationship between us and a principal investigator has created a conflict of interest or otherwise affected interpretation of the study. The FDA or comparable foreign regulatory authority may therefore question the integrity of the data generated at the applicable clinical trial site and the utility of the clinical trial itself may be jeopardized. This could result in a delay in approval, or rejection, of our marketing applications by the FDA or comparable foreign regulatory authority, as the case may be, and may ultimately lead to the denial of marketing approval of one or more of our product candidates.

In addition, many of the factors that cause, or lead to, termination or suspension of, or a delay in the commencement or completion of, clinical trials may also ultimately lead to the denial of regulatory approval of a product candidate. We may make formulation or manufacturing changes to our product candidates, in which case we may need to conduct additional preclinical studies to bridge our modified product candidates to earlier versions. If we experience delays in the commencement or completion of our clinical trials, or if we terminate a

clinical trial prior to completion, the commercial prospects of our product candidates could be negatively impacted, and our ability to generate revenues from our product candidates may be delayed or eliminated entirely.

***If we experience delays or difficulties in enrolling patients in our ongoing or planned clinical trials, our receipt of necessary regulatory approvals could be delayed or prevented.***

We may not be able to initiate or continue our ongoing or planned clinical trials for our product candidates if we are unable to identify and enroll a sufficient number of eligible patients to participate in these trials as required by the FDA or comparable foreign regulatory authorities. In our DAY101 program, we utilize genomic profiling of patients' tumors to identify suitable patients for recruitment into our clinical trials. We cannot be certain (i) how many patients will have the requisite alterations for inclusion in our clinical trials, (ii) that the number of patients enrolled in each program will suffice for regulatory approval or (iii) whether each specific BRAF mutation targeted will be included in the approved drug labeling. If our strategies for patient identification and enrollment prove unsuccessful, we may have difficulty enrolling or maintaining patients appropriate for our product candidates. The conditions for which we currently plan to evaluate our product candidates are orphan or rare diseases with limited patient pools from which to draw for clinical trials. The eligibility criteria of our clinical trials, once established, will further limit the pool of available trial participants. In addition, some of our competitors currently have ongoing clinical trials for product candidates that would treat the same patients as our clinical product candidates, and patients who would otherwise be eligible for our clinical trials may instead enroll in clinical trials of our competitors' product candidates. Patient enrollment is also affected by other factors, including:

- severity of the disease under investigation;
- our ability to recruit clinical trial investigators of appropriate competencies and experience;
- the incidence and prevalence of our target indications;
- clinicians' and patients' awareness of, and perceptions as to the potential advantages and risks of our product candidates in relation to other available therapies, including any new drugs that may be approved for the indications we are investigating;
- competing studies or trials with similar eligibility criteria;
- invasive procedures required to enroll patients and to obtain evidence of the product candidate's performance during the clinical trial;
- availability and efficacy of approved medications for the disease under investigation;
- eligibility criteria defined in the protocol for the trial in question;
- the size and nature of the patient population required for analysis of the trial's primary endpoints;
- efforts to facilitate timely enrollment in clinical trials;
- whether we are subject to a partial or full clinical hold on any of our clinical trials;
- reluctance of physicians or patient advocacy organizations to encourage patient participation in clinical trials;
- the ability to monitor patients adequately during and after treatment;

- our ability to obtain and maintain patient consents; and
- proximity and availability of clinical trial sites for prospective patients.

Our inability to enroll and maintain a sufficient number of patients for our clinical trials would result in significant delays or may require us to abandon one or more clinical trials altogether. There may be competing trials, as well as the limited bandwidth of pediatric oncology institutions for running trials, which can lead to the prioritization of certain trials, leading to delays in our clinical trials. In addition, parents may be reluctant to enroll their children in our clinical trials, or may decide to withdraw their children from our clinical trials to pursue other therapies. Enrollment delays in our clinical trials, including due to the COVID-19 pandemic, may result in increased development costs, which would cause the value of our company to decline and limit our ability to obtain additional financing.

***We face substantial competition which may result in others discovering, developing or commercializing products before or more successfully than we do.***

The pharmaceutical and biotechnology industries are characterized by rapidly advancing technologies, intense competition and a strong emphasis on proprietary and novel products and product candidates. Our competitors have developed, are developing or may develop products, product candidates and processes competitive with our product candidates. Any product candidates that we successfully develop and commercialize will compete with existing therapies and new therapies that may become available in the future. We believe that a significant number of product candidates are currently under development, and may become commercially available in the future, for the treatment of conditions for which we may attempt to develop product candidates. In addition, our product candidates may need to compete with drugs physicians use off-label to treat the indications for which we seek approval. This may make it difficult for us to replace existing therapies with our product candidates.

In particular, there is intense competition in the field of oncology. We have competitors both in the United States and internationally, including major multinational pharmaceutical companies, established biotechnology companies, specialty pharmaceutical companies, emerging and start-up companies, universities and other research institutions. We also compete with these organizations to recruit and retain qualified scientific and management personnel, which could negatively affect our level of expertise and our ability to execute our business plan. We will also face competition in establishing clinical trial sites and patient registration for clinical trials, as well as in acquiring technologies complementary to, or necessary for, our programs.

We expect to face competition from existing products and products in development for each of our programs. Drug discovery efforts focused on V600 mutations have led to clinical success in some cancers. Three BRAF inhibitors have been approved by the FDA for the treatment of tumors containing V600E or V600K mutations. These first-generation BRAF inhibitors, known more generally as Type I RAF inhibitors, are vemurafenib, marketed as Zelboraf® by Genentech; dabrafenib, marketed as Tafinlar® by Novartis; and encorafenib, marketed as Braftovi® by Pfizer. Dabrafinib, in combination with trametinib, is being evaluated in a Novartis-sponsored randomized Phase 2 clinical trial in newly-diagnosed patients with BRAF V600 mutant pLGG.

Four MEK inhibitors have been approved by the FDA. Three have been approved for the treatment of tumors containing BRAF V600E or V600K mutations, including cobimetinib, marketed as Cotellic® by Genentech; trametinib, marketed as Tafinlar® by Novartis; and binimetinib, marketed as Mektovi® by Pfizer. A fourth MEK inhibitor—selumetinib, marketed as Koselugo® by AstraZeneca, has been approved for the treatment of pediatric patients, 2 years of age and older, with neurofibromatosis type 1, or NF1, who have symptomatic, inoperable plexiform neurofibromas.

Novartis is developing the next-generation BRAF inhibitor LXH254 in combination with various agents, in Phase 1/2 clinical trials. BeiGene has two next-generation BRAF programs: Lifirafenib (BGB-283), which is currently in a Phase 1/2 trial in combination with mirdametinib, and BGB-3245 which is currently in a single agent in Phase 1 dose escalation study. Hanmi / Genentech are developing belvarafenib in combination with cobimetinib in a Phase 1b clinical trial. Fore Therapeutics (formelly NovellusDx) is developing the RAF dimer breaker PLX8394 in a Phase 1/2 trial in combination with cobicistat. Kinnate and Black Diamond Therapeutics have next-generation BRAF inhibitors in various stages of preclinical development.

With regard to the treatment of pLGG, some MEK inhibitors and some type I RAF inhibitors other targeted therapies are being studied in academic investigator-initiated clinical trials, and in some regions may be being used in an off-label manner. The off-label use of these agents may represent competition for DAY101 when it enters the market.

Many of our competitors, either alone or with their collaborators, have significantly greater financial resources, established presence in the market, and expertise in research and development, manufacturing, preclinical and clinical testing, obtaining regulatory approvals and reimbursement and marketing approved products than we do. Large pharmaceutical and biotechnology companies, in particular, have extensive experience in clinical testing, obtaining regulatory approvals, recruiting patients and manufacturing biotechnology product candidates. These companies also have significantly greater research and marketing capabilities than we do and may also have product candidates that have been approved or are in late stages of development, and collaborative arrangements in our target markets with leading companies and research institutions. Established pharmaceutical and biotechnology 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. Smaller or early-stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large and established companies, as well as in acquiring technologies complementary to, or necessary for, our programs. As a result of all of these factors, our competitors may succeed in obtaining approval from the FDA or comparable foreign regulatory authorities or in discovering, developing and commercializing product candidates in our field before we do, which could result in our competitors establishing a strong market position before we are able to enter the market or make our development more complicated.

Our potential commercial opportunity could be reduced or eliminated if our competitors develop and commercialize products that are safer, more effective, have fewer or less severe side effects, are more convenient, have a broader label, are marketed more effectively, are more widely reimbursed or are less expensive than any products that we may develop. Even if the product candidates we develop achieve marketing approval, they may be priced at a significant premium over competitive products if any have been approved by then, resulting in reduced competitiveness. Technological advances or products developed by our competitors may render our technologies or product candidates obsolete, less competitive or not economical. If we are unable to compete effectively, our opportunity to generate revenue from the sale of our products we may develop, if approved, could be adversely affected. For additional information regarding our competition, see the section of this prospectus titled “Business—Competition.”

***If we fail to demonstrate safety and efficacy to our stakeholders, our reputation may be harmed and our business will suffer.***

In addition to the regulatory approvals required for product candidates developed for adults, parents, physicians, caregivers, advocates, and patients may not want to participate in our trials, prescribe or take our products, or want to be affiliated with our company if we do not maintain trust and a reputation for integrity and high quality interactions and products. Pediatric drug development is typically deferred to protect children

from exposure to investigational agents, which have historically been cytotoxic chemotherapies that are often associated with severe side effects and poor tolerability. If one of our products or product candidates was found to have a safety impact on pediatric patients our reputation would be harmed and our business would suffer.

***The COVID-19 pandemic could adversely impact our business, including our clinical trials and clinical trial operations.***

The COVID-19 pandemic in the United States and in other countries in which we have planned or have active clinical trial sites and where our third-party manufacturers operate, could cause significant disruptions that could severely impact our business and clinical trials, including:

- delays or difficulties in screening, enrolling and maintaining patients in our clinical trials;
- delays or difficulties in clinical site initiation, including difficulties in recruiting clinical site investigators and clinical site staff;
- diversion of healthcare resources away from the conduct of clinical trials, including the diversion of hospitals serving as our clinical trial sites and hospital staff supporting the conduct of our clinical trials as they prioritize resources towards addressing the COVID-19 pandemic;
- inability or unwillingness of subjects to travel to the clinical trial sites;
- delays, difficulties, or incompleteness in data collection and analysis and other related activities;
- decreased implementation of protocol required clinical trial activities and quality of source data verification at clinical trial sites;
- interruption of key clinical trial activities, such as clinical trial site monitoring, due to limitations on travel imposed or recommended by federal or state governments, employers and others;
- limitations in employee resources that would otherwise be focused on the conduct of our clinical trials and our other research and development activities, including because of sickness of employees or their families or mitigation measures such as lock-downs and social distancing;
- interruptions, difficulties or delays arising in our existing operations and company culture as a result of all of our employees working remotely, including those hired during the COVID-19 pandemic;
- delays due to production shortages resulting from any events affecting supply or manufacturing capabilities domestically and abroad;
- delays in receiving approval from local regulatory authorities to initiate our planned clinical trials;
- delays in clinical sites receiving the supplies and materials needed to conduct our clinical trials;
- interruption in global and domestic shipping that may affect the transport of clinical trial materials, such as investigational drug products used in our clinical trials;
- changes in local regulations as part of a response to the COVID-19 pandemic which may require us to change the ways in which our clinical trials are conducted, which may result in unexpected costs, delays, or to discontinue the clinical trials altogether;
- delays in necessary interactions with local regulators, ethics committees and other important agencies and contractors due to limitations in employee resources or forced furlough of government employees;
- refusal of regulatory authorities such as FDA to accept data from clinical trials in affected geographies; and

- adverse impacts on global economic conditions which could have an adverse effect on our business and financial condition, including impairing our ability to raise capital when needed.

Such disruptions could impede, delay, limit or prevent completion of our ongoing clinical trials and future preclinical studies or commencement of new clinical trials and ultimately lead to the delay or denial of regulatory approval of our product candidates, which would seriously harm our operations and financial condition and increase our costs and expenses. We are in close contact with our contract research organizations, or CROs, contract manufacturing organizations, or CMOs, and clinical sites as we seek to mitigate the impact of the COVID-19 pandemic on our studies and current timelines. Measures we have taken in response to the COVID-19 pandemic include, where feasible, conducting remote clinical trial site activations and data monitoring, and limiting on-site patient visits by adjusting patient assessments and protocol. However, despite these efforts, we have experienced limited delays in trial site initiations, patient participation and patient enrollment in some of our clinical trials and we may continue to experience some delays in our clinical trials and preclinical studies and delays in data collection and analysis. These delays so far have had a limited impact, but this may change as the COVID-19 pandemic and the response to such COVID-19 pandemic continues to evolve, and could have an adverse impact on our timelines and our business. The COVID-19 pandemic could also affect the business of the FDA or other health authorities, which could result in delays in meetings related to planned or completed clinical trials and ultimately of reviews and approvals of our product candidates.

The global COVID-19 pandemic continues to evolve. The extent to which the COVID-19 pandemic may impact our business and clinical trials will depend on future developments, which are highly uncertain and cannot be predicted with confidence, such as the ultimate geographic spread of the disease, the duration of the pandemic, travel restrictions and social distancing in the United States and other countries, business closures or business disruptions and the effectiveness of actions taken in the United States and other countries to contain and treat the disease.

To the extent the COVID-19 pandemic adversely affects our business, financial condition and operating results, it may also have the effect of heightening many of the risks described in this “Risk Factors” section.

***Adverse side effects or other safety risks associated with DAY101, pimasertib or any future product candidates we may develop could delay or preclude approval, cause us to suspend or discontinue clinical trials or abandon further development, limit the commercial profile of an approved product, or result in significant negative consequences following marketing approval, if any.***

As is the case with pharmaceuticals generally, we have observed side effects and adverse events associated with our lead product candidate, DAY101. These side effects included acneiform rash, anemia, headache, nausea and fatigue.

Results of our ongoing and planned clinical trials could reveal a high and unacceptable severity and prevalence of side effects or unexpected characteristics. Undesirable side effects caused by our product candidates could result in the delay, suspension or termination of clinical trials by us or regulatory authorities for a number of reasons. Furthermore, clinical trials by their nature utilize a sample of the potential patient population. With a limited number of subjects and limited duration of exposure, rare and severe side effects of our product candidates or those of our competitors may only be uncovered with a significantly larger number of patients exposed to the drug.

Additionally, patients treated with our product candidates may also be undergoing surgical, radiation and chemotherapy treatments, which can cause side effects or adverse events that are unrelated to our product candidates but may still impact the success of our clinical trials. The inclusion of critically ill patients in our clinical trials may result in deaths or other adverse medical events due to other therapies or medications that

such patients may be using or due to the gravity of such patients' illnesses. For example, it is expected that some of the patients to be enrolled in our future clinical trials will die or experience major clinical events either during the course of our clinical trials or after participating in such trials for non-treatment related reasons, which could impact development of DAY101 or pimasertib. If we elect or are required to delay, suspend or terminate any clinical trial, the commercial prospects of our product candidates will be harmed and our ability to generate product revenues from this product candidate will be delayed or eliminated. Serious adverse events, or SAEs, observed in clinical trials could hinder or prevent market acceptance of our product candidates or reduce the duration of time that physicians expect to use our product in particular patients. Any of these occurrences may harm our business, prospects, financial condition and results of operations significantly.

Moreover, if our product candidates are associated with undesirable side effects in clinical trials or have characteristics that are unexpected, we may elect to abandon or limit their development to more narrow uses or subpopulations in which the undesirable side effects or other characteristics are less prevalent, less severe or more acceptable from a risk-benefit perspective, which may limit the commercial expectations for our product candidates, if approved. We may also be required to modify our study plans based on findings in our clinical trials. Such side effects could also affect patient recruitment or the ability of enrolled patients to complete the trial. Many drugs that initially showed promise in early stage testing have later been found to cause side effects that prevented further development. In addition, regulatory authorities may draw different conclusions, require additional testing to confirm these determinations, require more restrictive labeling, or deny regulatory approval of the product candidate.

It is possible that, as we test our product candidates in larger, longer and more extensive clinical trials, including with different dosing regimens, or as the use of our product candidates becomes more widespread following any regulatory approval, illnesses, injuries, discomforts and other adverse events that were observed in earlier trials, as well as conditions that did not occur or went undetected in previous trials, will be reported by patients. If such side effects become known later in development or upon approval, if any, such findings may harm our business, financial condition, results of operations and prospects significantly.

In addition, if any of our product candidates receive marketing approval, and we or others later identify undesirable side effects caused by treatment with such drug, a number of potentially significant negative consequences could result, including:

- regulatory authorities may withdraw approval of the drug;
- we may be required to recall a product or change the way the drug is administered to patients;
- regulatory authorities may require additional warnings in the labeling, such as a contraindication or a boxed warning, or issue safety alerts, Dear Healthcare Provider letters, press releases or other communications containing warnings or other safety information about the product
- we may be required to implement a REMS or create a medication guide outlining the risks of such side effects for distribution to patients;
- additional restrictions may be imposed on the marketing or promotion of the particular product or the manufacturing processes for the product or any component thereof;
- we could be sued and held liable for harm caused to patients;
- we may be subject to regulatory investigations and government enforcement actions;
- the drug could become less competitive; and
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of our product candidates, if approved, and could significantly harm our business, financial condition, results of operations and prospects.

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

From time to time, we may publicly disclose preliminary, interim or topline data from our clinical trials, such as the preliminary data analysis for the pivotal Phase 2 of our DAY101 trial. These updates are based on a preliminary analysis of then-available data, and the results and related findings and conclusions are subject to change following a more comprehensive review of the data related to the particular study or trial. Additionally, interim data from clinical trials that we may complete are subject to the risk that one or more of the clinical outcomes may materially change as patient enrollment continues and more patient data become available. Therefore, positive interim results in any ongoing clinical trial may not be predictive of such results in the completed study or trial. We also make assumptions, estimations, calculations and conclusions as part of our analyses of data, and we may not have received or had the opportunity to fully and carefully evaluate all data. As a result, the topline results that we report may differ from future results of the same studies, or different conclusions or considerations may qualify such results, once additional data have been received and fully evaluated. Topline data also remain subject to audit and verification procedures that may result in the final data being materially different from the preliminary data we previously published.

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

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

Because we have limited financial and managerial resources, we focus on research programs and product candidates that we identify for specific indications. As a result, we may forego or delay pursuit of opportunities with other product candidates or for other indications that later prove to have greater commercial potential. Our resource allocation decisions may cause us to fail to capitalize on viable commercial products or profitable market opportunities. Our spending on current and future research and development programs and product candidates for specific indications may not yield any commercially viable products. If we do not accurately evaluate the commercial potential or target market for a particular product candidate, we may relinquish valuable rights to that product candidate through collaboration, licensing or other royalty arrangements in cases in which it would have been more advantageous for us to retain sole development and commercialization rights to such product candidate.

***The market opportunities for any product candidates we develop, if approved, may be limited to certain smaller patient subsets and may be smaller than we estimate them to be.***

We plan to seek approval of DAY101 as first-line treatment in pLGG. There is no guarantee that our product candidates would be approved for first-line treatment, and prior to any such approvals we may have to conduct additional clinical trials that may be costly, time-consuming and subject to risk.

Our projections of both the number of people who have the cancers we are targeting, as well as the subset of people with these cancers in a position to receive a particular line of therapy and who have the potential to benefit from treatment with our product candidates, are based on our beliefs and estimates. For example, pLGG is a rare disease, and as such, our projections of both the number of people who have this disease, as well as the subset of people with pLGG who have the potential to benefit from treatment with our product candidates, are based on estimates. These estimates have been derived from a variety of sources, including scientific literature, surveys of clinics, patient foundations or market research, and may prove to be incorrect. Further, new studies may change the estimated incidence or prevalence of the cancers that we are targeting. The potentially addressable patient population for our product candidates may be limited or may not be amenable to treatment with our product candidates. Consequently, even if our product candidates are approved, the number of patients that may be eligible for treatment with our product candidates may turn out to be much lower than expected. In addition, we have not yet conducted market research to determine how treating physicians would expect to prescribe a product that is approved for multiple tumor types if there are different lines of approved therapies for each such tumor type. Even if we obtain significant market share for our products, if approved, if the potential target populations are small, we may never achieve profitability without obtaining regulatory approval for additional indications.

***Our clinical development activities are focused on the development of targeted therapeutics for patients with genomically defined cancers, which is a rapidly evolving area of science, and the approach we are taking to discover and develop drugs is novel and may never lead to approved or marketable products.***

The discovery and development of targeted therapeutics for patients with genomically defined cancers is an emerging field, and the scientific discoveries that form the basis for our efforts to discover, identify and develop product candidates are relatively new. The scientific evidence to support the feasibility of developing product candidates based on these discoveries is both preliminary and limited. Although we believe, based on our product candidates' preclinical trial results and our clinical work, that the genomic alterations targeted by our programs are oncogenic drivers, clinical results may not confirm this hypothesis or may only confirm it for certain alterations or certain tumor types. The patient populations for our product candidates are limited to those with specific target alterations and may not be completely defined but are substantially smaller than the general treated cancer population, and we will need to screen and identify these patients with targeted alterations. Successful identification of patients is dependent on several factors, including achieving certainty as to how specific alterations respond to our product candidates and the ability to identify such alterations. Furthermore, even if we are successful in identifying patients, we cannot be certain that the resulting patient populations for each mutation will be large enough to allow us to successfully obtain approval for each mutation type and commercialize our product candidates and achieve profitability. In addition, even if our approach is successful in showing clinical benefit for RAF-driven cancers for our DAY101 program, we may never successfully identify additional oncogenic alterations sensitive to DAY101 in other MAPK-driven tumors. Therefore, we do not know if our approach of treating patients with genomically defined cancers will be successful, and if our approach is unsuccessful, our business will suffer.

***Our product candidates may not achieve adequate market acceptance among physicians, patients or their families, healthcare payors and others in the medical community necessary for commercial success.***

Even if our product candidates receive regulatory approval, they may not gain adequate market acceptance among physicians, patients or their families, third-party payors and others in the medical community. The degree of market acceptance of any of our approved product candidates will depend on a number of factors, including:

- the efficacy, durability and safety profile as demonstrated in clinical trials compared to alternative treatments, in addition to functional, quality, or patient-reported outcomes;
- the timing of market introduction of the product candidate as well as competitive products;
- the clinical indications for which a product candidate is approved;
- restrictions on the use of product candidates in the labeling approved by regulatory authorities, such as boxed warnings or contraindications in labeling, or a REMS, if any, which may not be required of alternative treatments and competitor products;
- the potential and perceived advantages of our product candidates over alternative treatments;
- the cost of treatment in relation to alternative treatments and the cost/benefit ratios of each;
- the availability of coverage and adequate reimbursement by third-party payors, including government authorities, and timing of relevant formulary decision-making resulting in this coverage and reimbursement;
- the availability of an approved product candidate for use as a combination therapy;
- relative convenience and ease of administration in relation to competition;
- the willingness of the target patient population (which may include willingness of our pediatric patients' parents) to try new therapies and undergo required diagnostic screening to determine treatment eligibility and of physicians to prescribe these therapies and diagnostic tests;
- the effectiveness of sales, marketing efforts and market access;
- unfavorable publicity relating to our product candidates; and
- the approval of other new therapies for the same indications.

If any of our product candidates are approved but do not achieve an adequate level of acceptance by physicians, hospitals, healthcare payors and patients, we may not generate or derive sufficient revenue from that product candidate and our financial results could be negatively impacted.

***Any product candidates we develop may become subject to unfavorable third-party coverage and reimbursement practices, as well as pricing regulations.***

The availability and extent of coverage and adequate reimbursement by third-party payors, including government health administration authorities, private health coverage insurers, managed care organizations and other third-party payors is essential for most patients to be able to afford expensive treatments. Sales of any of our product candidates that receive marketing approval will depend substantially, both in the United States and internationally, on the extent to which the costs of such product candidates will be covered and reimbursed by third-party payors. If reimbursement is not available, or is available only to limited levels, we may not be able to successfully commercialize our product candidates. Even if coverage is provided, the

approved reimbursement amount may not be high enough to allow us to establish or maintain pricing sufficient to realize an adequate return on our investment. Coverage and reimbursement may impact the demand for, or the price of, any product candidate for which we obtain marketing approval. If coverage and reimbursement are not available or reimbursement is available only to limited levels, we may not successfully commercialize any product candidate for which we obtain marketing approval.

There is significant uncertainty related to third-party payor coverage and reimbursement of newly approved products. The payer mix for pediatric products in the United States is a fragmented combination of state-specific Medicaid policies and a broad universe of private insurance companies. There is no consistent policy or leading payer to inform other price setting entities. National payer policies are expected to be critical to our ability to achieve broad payment coverage. However, one third-party payor's determination to provide coverage for a product candidate does not assure that other payors will also provide coverage for the product candidate. As a result, the coverage determination process is often time-consuming and costly. This process will require us to provide scientific and clinical support for the use of our products to each third-party payor separately, with no assurance that coverage and adequate reimbursement will be applied consistently or obtained in the first instance.

As federal and state governments implement additional health care cost containment measures, including measures to lower prescription drug pricing, we cannot be sure that our products, if approved, will be covered by private or public payors, and if covered, whether the reimbursement will be adequate or competitive with other marketed products. For example, the former president of the United States signed executive orders aimed at lowering prescription drug prices and the current president of the United States has expressed an intention to address prescription drug costs. These and other actions by federal and state governments and health plans may put additional downward pressure on pharmaceutical pricing and health care costs, which could negatively impact coverage and reimbursement for our products if approved, our revenue, and our ability to compete with other marketed products and to recoup the costs of our research and development.

Increasingly, third-party payors are requiring that drug companies provide them with predetermined discounts from list prices and are challenging the prices charged for medical products. Further, such payors are increasingly challenging the price, examining the medical necessity and reviewing the cost effectiveness of medical product candidates. There may be especially significant delays in obtaining coverage and reimbursement for newly approved drugs. Third-party payors may limit coverage to specific product candidates on an approved list, known as a formulary, which might not include all FDA-approved drugs for a particular indication. We plan to conduct expensive pharmaco-economic studies to demonstrate the medical necessity and cost effectiveness of our products. Nonetheless, our product candidates may not be considered medically necessary or cost effective. We cannot be sure that coverage and reimbursement will be available for any product that we commercialize and, if reimbursement is available, what the level of reimbursement will be.

In addition, companion diagnostic tests require coverage and reimbursement separate and apart from the coverage and reimbursement for their companion pharmaceutical or biological products. Similar challenges to obtaining coverage and reimbursement, applicable to pharmaceutical or biological products, will apply to companion diagnostics. Additionally, if any companion diagnostic provider is unable to obtain reimbursement or is inadequately reimbursed, that may limit the availability of such companion diagnostic, which would negatively impact prescriptions for our product candidates, if approved.

Outside the United States, the commercialization of therapeutics is generally subject to extensive governmental price controls and other market regulations, and we believe the increasing emphasis on cost containment initiatives in Europe, Canada and other countries has and will continue to put pressure on the pricing and usage of therapeutics such as our product candidates. In many countries, particularly the countries of the European Union, or EU, medical product prices are subject to varying price control mechanisms as part of national health

systems. In these countries, pricing negotiations with governmental authorities can take considerable time after a product receives marketing approval. To obtain reimbursement or pricing approval in some countries, we may be required to conduct a clinical trial that compares the cost-effectiveness of our product candidate to other available therapies. In general, product prices under such systems are substantially lower than in the United States. Other countries allow companies to fix their own prices for products but monitor and control company profits. Additional foreign price controls or other changes in pricing regulation could restrict the amount that we are able to charge for our product candidates. Accordingly, in markets outside the United States, the reimbursement for our products may be reduced compared with the United States and may be insufficient to generate commercially reasonable revenue and profits.

If we are unable to establish or sustain coverage and adequate reimbursement for any product candidates from third-party payors, the adoption of those products and sales revenue will be adversely affected, which, in turn, could adversely affect the ability to market or sell those product candidates, if approved. Coverage policies and third-party payor reimbursement rates may change at any time. Even if favorable coverage and reimbursement status is attained for one or more products for which we receive regulatory approval, less favorable coverage policies and reimbursement rates may be implemented in the future.

***Our business entails a significant risk of product liability and if we are unable to obtain sufficient insurance coverage such inability could have an adverse effect on our business and financial condition.***

Our business exposes us to significant product liability risks inherent in the development, testing, manufacturing and marketing of therapeutic treatments. Product liability claims could delay or prevent completion of our development programs. If we succeed in marketing products, such claims could result in an FDA or other regulatory authority investigation of the safety and effectiveness of our products, our manufacturing processes and facilities or our marketing programs. FDA or other regulatory authority investigations could potentially lead to a recall of our products or more serious enforcement action, limitations on the approved indications for which they may be used or suspension or withdrawal of approvals. Regardless of the merits or eventual outcome, liability claims may also result in decreased demand for our products, injury to our reputation, costs to defend the related litigation, a diversion of management's time and our resources and substantial monetary awards to trial participants or patients. We currently have product liability insurance that we believe is appropriate for our stage of development and may need to obtain higher levels prior to advancing our product candidates into clinical trials or marketing any of our product candidates, if approved. Any insurance we have or may obtain may not provide sufficient coverage against potential liabilities. Furthermore, clinical trial and product liability insurance is becoming increasingly expensive. As a result, we may be unable to obtain sufficient insurance at a reasonable cost to protect us against losses caused by product liability claims that could have an adverse effect on our business and financial condition.

## Risks related to government regulation

***The development and commercialization of pharmaceutical products are subject to extensive regulation, and we may not obtain regulatory approvals for DAY101, pimasertib or any future product candidates, on a timely basis or at all.***

The clinical development, manufacturing, labeling, packaging, storage, recordkeeping, advertising, promotion, export, import, marketing, distribution, adverse event reporting, including the submission of safety and other post-marketing information and reports, and other possible activities relating to DAY101 and pimasertib, currently our only product candidates in planned or ongoing clinical trials, as well as any other product candidate that we may develop in the future, are subject to extensive regulation. Marketing approval of drugs in the United States requires the submission of an NDA to the FDA, and we are not permitted to market any

product candidate in the United States until we obtain approval from the FDA of the NDA for that product. An NDA must be supported by extensive clinical and preclinical data, as well as extensive information regarding pharmacology, chemistry, manufacturing and controls. Our product candidates must be approved by comparable regulatory authorities in other jurisdictions prior to commercialization.

FDA approval of an NDA is not guaranteed, and the review and approval process is an expensive and uncertain process that may take several years. Of the large number of drugs in development in the United States, only a small percentage will successfully complete the FDA regulatory approval process and will be commercialized. Accordingly, there can be no assurance that any of our product candidates will receive regulatory approval in the United States, or other jurisdictions.

The FDA also has substantial discretion in the approval process. The number and types of preclinical studies and clinical trials that will be required for NDA approval varies depending on the product candidate, the disease or the condition that the product candidate is designed to treat and the regulations applicable to any particular product candidate. For example, if successful, we believe that the expansion portions of the pivotal Phase 2 clinical trial of DAY101 may be sufficient to support FDA approval of an NDA for DAY101, but the FDA may disagree with the sufficiency of our data and require additional clinical trials. Additionally, depending upon the results of the expansion portions of the Phase 2 clinical trial of DAY101, we may choose to seek Subpart H accelerated approval for DAY101, which would require completion of a confirmatory trial to validate the clinical benefit of the drug. Despite the time and expense associated with preclinical studies and clinical trials, failure can occur at any stage. The results of preclinical and early clinical trials of DAY101 or pimasertib or any other product candidate may not be predictive of the results of our later-stage clinical trials. For example, while we may believe certain results in patients, such as stable disease, suggest encouraging clinical activity, stable disease is not considered a response for regulatory purposes in an endpoint assessing objective response rate, or ORR.

Clinical trial failure may result from a multitude of factors including flaws in trial design, dose selection, placebo effect, patient enrollment criteria and failure to demonstrate favorable safety or efficacy traits, and failure in clinical trials can occur at any stage. Companies in the pharmaceutical industry frequently suffer setbacks in the advancement of clinical trials due to lack of efficacy or adverse safety profiles, notwithstanding promising results in earlier trials. Based upon negative or inconclusive results, we may decide, or regulators may require us, to conduct additional clinical trials or preclinical studies. In addition, data obtained from clinical trials are susceptible to varying interpretations, and regulators may not interpret our data as favorably as we do, which may further delay, limit or prevent marketing approval. The FDA could delay, limit or deny approval of a product candidate for many reasons, including because the FDA:

- may not deem our product candidate to be safe and effective;
- determines that the product candidate does not have an acceptable benefit-risk profile;
- determines in the case of an NDA seeking accelerated approval that the NDA does not provide evidence that the product candidate represents a meaningful advantage over available therapies;
- determines that the ORR and duration of response are not clinically meaningful;
- may not agree that the data collected from preclinical studies and clinical trials are acceptable or sufficient to support the submission of an NDA or other submission or to obtain regulatory approval, and may impose requirements for additional preclinical studies or clinical trials;
- may determine that adverse events experienced by participants in our clinical trials represent an unacceptable level of risk;

- may determine that the population studied in the clinical trial may not be sufficiently broad or representative to assure safety in the full population for which we seek approval;
- may not accept clinical data from trials, which are conducted at clinical facilities or in countries where the standard of care is potentially different from that of the United States;
- may disagree regarding the formulation, labeling and/or the specifications;
- may not approve the manufacturing processes associated with our product candidate or may determine that a manufacturing facility does not have an acceptable compliance status;
- may change approval policies or adopt new regulations; or
- may not file a submission due to, among other reasons, the content or formatting of the submission.

We have not obtained FDA approval for any product. This lack of experience may impede our ability to obtain FDA approval in a timely manner, if at all, for our clinical product candidates.

If we experience delays in obtaining approval or if we fail to obtain approval of DAY101 or pimasertib, our commercial prospects will be harmed and our ability to generate revenues will be materially impaired which would adversely affect our business, prospects, financial condition and results of operations.

***The accelerated approval pathway for our product candidates may not lead to a faster development or regulatory review or approval process and does not increase the likelihood that our product candidates will receive marketing approval.***

Under the FDA's accelerated approval program, the FDA may approve a drug for a serious or life-threatening illness that provides meaningful therapeutic benefit to patients over existing treatments based upon a surrogate endpoint that is reasonably likely to predict clinical benefit, or on a clinical endpoint that can be measured earlier than irreversible morbidity or mortality, 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. We may seek accelerated approval for one or more of our product candidates on the basis of ORR, a surrogate endpoint that we believe is reasonably likely to predict clinical benefit.

For drugs granted accelerated approval, post-marketing confirmatory trials are required to describe the anticipated effect on irreversible morbidity or mortality or other clinical benefit. These confirmatory trials must be completed with due diligence and, in most cases, the FDA may require that the trial be designed, initiated, and/or fully enrolled prior to approval. If any of our competitors were to receive full approval for an indication for which we are seeking accelerated approval before we receive accelerated approval, the indication we are seeking may no longer qualify as a condition for which there is an unmet medical need and accelerated approval of our product candidate would be more difficult or may not occur. Moreover, the FDA may withdraw approval of our product candidate approved under the accelerated approval pathway if, for example:

- the trial or trials required to verify the predicted clinical benefit of our product candidate fail to verify such benefit or do not demonstrate sufficient clinical benefit to justify the risks associated with the drug;
- other evidence demonstrates that our product candidate is not shown to be safe or effective under the conditions of use;
- we fail to conduct any required post-approval trial of our product candidate with due diligence; or
- we disseminate false or misleading promotional materials relating to the relevant product candidate.

***Even though we have received Breakthrough Therapy designation by the FDA for DAY101 in treating pLGG, such designation may not lead to a faster development or regulatory review or approval process, and it does not increase the likelihood that DAY101 will receive marketing approval.***

We have received Breakthrough Therapy designation by the FDA for DAY101 in patients with advanced pLGG. A breakthrough therapy is defined as a drug that is intended, 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 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. For drugs that have been designated as breakthrough therapies, interaction and communication between the FDA and the sponsor of the trial can help to identify the most efficient path for clinical development while minimizing the number of patients placed in ineffective control regimens. Drugs designated as breakthrough therapies by the FDA are also eligible for priority review if supported by clinical data at the time of the submission of the NDA.

Although Breakthrough Designation or access to any other expedited program may expedite the development or approval process, it does not change the standards for approval. Although we obtained breakthrough device designation for DAY101 in advanced pLGG, we may not experience faster development timelines or achieve faster review or approval compared to conventional FDA procedures. For example, the time required to identify and resolve issues relating to manufacturing and controls, the acquisition of a sufficient supply of our product for clinical trial purposes or the need to conduct additional nonclinical or clinical studies may delay approval by the FDA, even if the product qualifies for breakthrough designation or access to any other expedited program. Access to an expedited program may also be withdrawn by the FDA if it believes that the designation is no longer supported by data from our clinical development program. Additionally, qualification for any expedited review procedure does not ensure that we will ultimately obtain regulatory approval for such product.

***Our failure to obtain marketing approval in foreign jurisdictions would prevent our product candidates from being marketed in those jurisdictions, and any approval we are granted for our product candidates in the United States would not assure approval of product candidates in foreign jurisdictions.***

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

***We may not be able to obtain or maintain orphan drug designation or exclusivity for our product candidates.***

We have obtained orphan drug designation in the United States for use of DAY101 in treating malignant glioma. We may seek orphan drug designation for DAY101 in additional indications or for pimasertib or any product candidates we develop in the future. Regulatory authorities in some jurisdictions, including the United States, may designate drugs for relatively small patient populations as “orphan drugs.” Under the Orphan Drug Act, the FDA may designate a drug as an orphan drug if it is intended to treat a rare disease or condition, which is

generally defined as a patient population of fewer than 200,000 individuals in the United States, or if the disease or condition affects more than 200,000 individuals in the United States and there is no reasonable expectation that the cost of developing the drug for the type of disease or condition will be recovered from sales of the product 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 FDA from approving another marketing application for the same drug for the same indication during that time period. The applicable period is seven years in the United States and ten years in the European Union. The European exclusivity period can be reduced to six years if a drug no longer meets the criteria for orphan drug designation or if the drug is sufficiently profitable so that market exclusivity is no longer justified. Orphan drug exclusivity may be lost if the FDA determines that the request for designation was materially defective or if the manufacturer is unable to assure sufficient quantity of the drug to meet the needs of patients with the rare disease or condition.

In the United States, the FDA may approve a subsequent application to market the same drug for the same indication during the exclusivity period in certain circumstances, such as if the subsequent product demonstrates clinical superiority (i.e., the subsequent product is safer, more effective or makes a major contribution to patient care) over the product with orphan exclusivity. Competitors, however, may receive approval of different products for the same indication for which the orphan product has exclusivity, or obtain approval for the same product but for a different indication than that for which the orphan product has exclusivity. Orphan drug designation also entitles a party to financial incentives, such as opportunities for grant funding towards clinical trial costs, tax advantages and user-fee waivers.

We cannot assure you that any future application for orphan drug designation with respect to any other product candidate will be granted. If we are unable to obtain orphan drug designation with respect to other product candidates in the United States, we will not be eligible to obtain the period of market exclusivity that could result from orphan drug designation or be afforded the financial incentives associated with orphan drug designation.

***We may seek a rare pediatric disease designation for one or more of our product candidates. Even if we were to obtain approval for our product candidates with the rare pediatric disease designation, the Rare Pediatric Disease Priority Review Voucher program may no longer be in effect at the time of such approval or we might not be able to capture the value of the rare pediatric disease Priority Review Voucher program.***

Congress authorized the FDA to award priority review vouchers to sponsors of certain rare pediatric disease product applications that meet the specified criteria. These vouchers are designed to encourage development of new drug and biological products for prevention and treatment of certain rare pediatric diseases.

Specifically, under this program, a sponsor who receives an approval for a drug or biologic for a “rare pediatric disease” may qualify for a voucher that can be redeemed to receive a priority review of a subsequent marketing application for a different product. The sponsor of a rare pediatric disease drug product receiving a priority review voucher may transfer (including by sale) the voucher to another sponsor. The voucher may be further transferred any number of times before the voucher is used, as long as the sponsor making the transfer has not yet submitted the application. Although the voucher can be sold or transferred to third parties, there is no guarantee that we will be able to receive such voucher, or realize any value if we receive and were to sell the voucher.

For the purposes of this program, a rare pediatric disease is a (i) serious or life-threatening disease in which the serious or life-threatening manifestations primarily affect individuals aged from birth to 18 years, including age

groups often called neonates, infants, children, and adolescents; and (ii) rare disease or conditions within the meaning of the Orphan Drug Act. The FDA may determine that an application for one or more of our product candidates does not meet the eligibility criteria for a priority review voucher upon approval.

Moreover, while the opportunity to receive a priority review voucher was meant to expire for those companies that had not received a designation by September 30, 2020, the Rare Pediatric Disease Priority Review Voucher program was extended by Congress in December 2020. Under the current statutory sunset provisions, after September 30, 2024, the FDA may only award a voucher for an approved rare pediatric disease product application if the sponsor has rare pediatric disease designation for the drug, and that designation was granted by September 30, 2024. After September 30, 2026, the FDA may not award any rare pediatric disease priority review vouchers.

***If we are unable to successfully develop, validate, obtain regulatory approval of and commercialize companion diagnostic tests for any product candidates that require such tests, or experience significant delays in doing so, we may not realize the full commercial potential of these product candidates.***

A companion diagnostic is a medical device, often an *in vitro* device, which provides information that is essential for the safe and effective use of a corresponding therapeutic drug product. A companion diagnostic can be used to identify patients who are most likely to benefit from the therapeutic product. In the future, if required to develop a companion diagnostic, we may evaluate opportunities to develop, either by ourselves or with collaborators, companion diagnostic tests for our product candidates for certain indications.

A companion diagnostic is generally developed in conjunction with the clinical program for an associated therapeutic product. To date, the FDA has required premarket approval of the vast majority companion diagnostics for cancer therapies. Generally, when a companion diagnostic is essential to the safe and effective use of a drug product, the FDA requires that the companion diagnostic be approved before or concurrent with approval of the therapeutic product and before a product can be commercialized. The approval of a companion diagnostic as part of the therapeutic product's labeling limits the use of the therapeutic product to only those patients who express the specific genetic alteration that the companion diagnostic was developed to detect.

Development of a companion diagnostic could include additional meetings with regulatory authorities, such as a pre-submission meeting and the requirement to submit an investigational device exemption application. In the case of a companion diagnostic that is designated as "significant risk device," approval of an investigational device exemption by the FDA and IRB is required before such diagnostic is used in conjunction with the clinical trials for a corresponding product candidate.

To be successful in developing, validating, obtaining approval of and commercializing a companion diagnostic, we or our collaborators will need to address a number of scientific, technical, regulatory and logistical challenges. We have no prior experience with medical device or diagnostic test development. If we choose to develop and seek FDA approval for companion diagnostic tests on our own, we will require additional personnel. We may rely on third parties for the design, development, testing, validation and manufacture of companion diagnostic tests for our therapeutic product candidates that require such tests, the application for and receipt of any required regulatory approvals, and the commercial supply of these companion diagnostics. If these parties are unable to successfully develop companion diagnostics for these therapeutic product candidates, or experience delays in doing so, we may be unable to enroll enough patients for our current and planned clinical trials, the development of these therapeutic product candidates may be adversely affected, these therapeutic product candidates may not obtain marketing approval, and we may not realize the full commercial potential of any of these therapeutics that obtain marketing approval. For any product candidate for which a companion diagnostic is necessary to select patients who may benefit from use of the product candidate, any failure to successfully develop a companion diagnostic may cause or contribute to delayed

enrollment of our clinical trials, and may prevent us from initiating a pivotal trial. In addition, the commercial success of any of our product candidates that require a companion diagnostic will be tied to and dependent upon the receipt of required regulatory approvals and the continued ability of such third parties to make the companion diagnostic commercially available to us on reasonable terms in the relevant geographies. There is no guarantee that physicians will adopt any particular companion diagnostic, be willing to understand how to use it, how to obtain reimbursement for it, how to explain it to patients, or dedicate staff to using it. Any failure to do so could materially harm our business, results of operations and financial condition.

***If we decide to pursue a Fast Track Designation by the FDA, it may not lead to a faster development or regulatory review or approval process.***

We may seek Fast Track Designation for one or more of our product candidates. If a drug is intended for the treatment of a serious or life-threatening condition and the drug demonstrates the potential to address unmet medical needs for this condition, the product sponsor may apply for FDA Fast Track Designation. The FDA has broad discretion whether to grant this designation, so even if we believe a particular product candidate is eligible for this designation, we cannot assure you that the FDA would decide to grant it. Even if we do receive Fast Track Designation, we may not experience a faster development process, review or approval compared to conventional FDA procedures. The FDA may withdraw Fast Track Designation if it believes that the designation is no longer supported by data from our clinical development program.

***Even if we obtain marketing approval for our product candidates, the terms of approvals, ongoing regulation of our products or other post-approval restrictions may limit how we manufacture and market our products and compliance with such requirements may involve substantial resources, which could materially impair our ability to generate revenue.***

Any product candidates for which we receive accelerated approval from the FDA are required to undergo one or more confirmatory clinical trials. If such a product candidate fails to meet its safety and efficacy endpoints in such confirmatory clinical trials, the regulatory authority may withdraw its conditional approval. There is no assurance that any such product will successfully advance through its confirmatory clinical trial(s). Therefore, even if a product candidate receives accelerated approval from the FDA, such approval may be withdrawn at a later date.

Even if marketing approval of a product candidate is granted, an approved product and its manufacturer and marketer are subject to ongoing review and extensive regulation, which may include the requirement to implement a REMS or to conduct costly post-marketing studies or clinical trials and surveillance to monitor the safety or efficacy of the product.

We must also comply with requirements concerning advertising and promotion for any of our product candidates for which we obtain marketing approval. 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 labeling. Thus, we will not be able to promote any products we develop for indications or uses for which they are not approved.

In addition, manufacturers of approved products and those manufacturers' facilities are required to ensure that quality control and manufacturing procedures conform to current good manufacturing practices, or cGMPs, which include requirements relating to quality control and quality assurance as well as the corresponding maintenance of records and documentation and reporting requirements. We and our CMOs could be subject to periodic unannounced inspections by the FDA to monitor and ensure compliance with cGMPs.

Accordingly, assuming we obtain marketing approval for one or more of our product candidates, we and our CMOs will continue to expend time, money and effort in all areas of regulatory compliance, including

manufacturing, production, product surveillance and quality control. If we are not able to comply with post-approval regulatory requirements, we could have the marketing approvals for our products withdrawn by regulatory authorities and our ability to market any future products could be limited, which could adversely affect our ability to achieve or sustain profitability. As a result, the cost of compliance with post-approval regulations may have a negative effect on our operating results and financial condition.

***Any product candidate for which we obtain marketing approval will be subject to ongoing enforcement of post-marketing requirements by regulatory agencies, and we could be subject to substantial penalties, including withdrawal of our product from the market, if we fail to comply with all regulatory requirements or if we experience unanticipated problems with our products, when and if any of them are approved.***

Any product candidate for which we obtain marketing approval, along with the manufacturing processes, post-approval clinical data, labeling, advertising and promotional activities for such product, will be subject to continual requirements of and review by the FDA and other regulatory authorities. These requirements include, but are not limited to, restrictions governing promotion of an approved product, submissions of safety and other post-marketing information and reports, registration and listing requirements, cGMP requirements relating to manufacturing, quality control, quality assurance and corresponding maintenance of records and documents, and requirements regarding drug distribution and the distribution of samples to physicians and recordkeeping.

The FDA and other federal and state agencies, including the Department of Justice, closely regulate compliance with all requirements governing prescription drug products, including requirements pertaining to marketing and promotion of drugs in accordance with the provisions of the approved labeling and manufacturing of products in accordance with cGMP requirements. For example, 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. Violations of such requirements may lead to investigations alleging violations of the Federal Food, Drug, and Cosmetic Act, or FDCA, and other statutes, including the False Claims Act and other federal and state healthcare fraud and abuse laws as well as state consumer protection laws. Our failure to comply with all regulatory requirements, and later discovery of previously unknown adverse events or other problems with our products, manufacturers or manufacturing processes, may yield various results, including:

- litigation involving patients taking our products;
- restrictions on such products, manufacturers or manufacturing processes;
- restrictions on the labeling or marketing of a product;
- restrictions on product distribution or use;
- requirements to conduct post-marketing studies or clinical trials;
- warning or untitled letters;
- withdrawal of the products from the market;
- refusal to approve pending applications or supplements to approved applications that we submit;
- recall of products;
- fines, restitution or disgorgement of profits or revenues;
- suspension or withdrawal of marketing approvals;

- damage to relationships with any potential collaborators;
- unfavorable press coverage and damage to our reputation;
- refusal to permit the import or export of our products;
- product seizure; or
- injunctions or the imposition of civil or criminal penalties.

Non-compliance by us or any future collaborator with regulatory requirements, including safety monitoring or pharmacovigilance, and with requirements related to the development of products for the pediatric population can also result in significant financial penalties.

***Our current and future relationships with customers and third-party payors may be subject to applicable anti-kickback, fraud and abuse, transparency, health privacy, and other healthcare laws and regulations, which could expose us to significant penalties, including criminal, civil, and administrative penalties, contractual damages, reputational harm and diminished profits and future earnings.***

Healthcare providers, including physicians, and third-party payors will play a primary role in the recommendation and prescription of any product candidates for which we obtain marketing approval. Our current and future arrangements with healthcare providers, third-party payors and customers may expose us to broadly applicable fraud and abuse and other healthcare laws and regulations that may constrain the business or financial arrangements and relationships through which we research, as well as, market, sell and distribute any products for which we obtain marketing approval. Restrictions under applicable federal and state healthcare laws and regulations that may be applicable to our business include the following:

- the federal Anti-Kickback Statute prohibits, among other things, persons and entities from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce or reward, or in return for, either the referral of an individual for, or the purchase, order or recommendation of, any good or service, for which payment may be made under a federal healthcare program such as Medicare and Medicaid;
- the federal civil false claims laws, including the False Claims Act, which can be enforced by civil whistleblower or qui tam actions on behalf of the government, and criminal false claims laws and the civil monetary penalties law, prohibit individuals or entities from, among other things, knowingly presenting, or causing to be presented false or fraudulent claims for payment by a federal government program, or making a false statement or record material to payment of a false claim or avoiding, decreasing or concealing an obligation to pay money to the federal government;
- the federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, prohibits, among other things, knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program, regardless of the payor (e.g. public or private), and knowingly and willfully falsifying, concealing or covering up by any trick or device a material fact or making any materially false, fictitious or fraudulent statements in connection with the delivery of, or payment for, healthcare benefits, items or services relating to healthcare matters;
- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, or HITECH, and their implementing regulations, impose requirements on certain covered healthcare providers, health plans, and healthcare clearinghouses as well as their respective business associates and their subcontractors that perform services for them that involve the use, or disclosure of, individually identifiable health information, relating to the privacy, security, and transmission of such individually identifiable health information;

- the federal transparency requirements under the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, collectively referred to as the ACA, requires certain manufacturers of drugs, devices, biologics and medical supplies to annually report to the Centers for Medicare & Medicaid Services, or CMS, information related to payments and other transfers of value provided to teaching hospitals, as well as ownership and investment interests held by physicians, defined to include doctors, dentists, optometrists, podiatrists and chiropractors, and their immediate family members. Beginning calendar year 2021, manufacturers must collect information regarding payments and transfers of value to physician assistants, nurse practitioners, clinical nurse specialists, anesthesiologist assistants, certified nurse anesthetists and certified nurse-midwives for reporting in the following year. The reported information is made available on a public website; and
- analogous state laws and regulations such as state anti-kickback and false claims laws and analogous non-U.S. fraud and abuse laws and regulations, may apply to sales or marketing arrangements and claims involving healthcare items or services reimbursed by non-governmental third-party payors, including private insurers. Some state laws require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance regulations promulgated by the federal government and may require drug manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers, marketing expenditures, or drug pricing, including price increases. State and local laws require the registration of pharmaceutical sales representatives. State and non-U.S. laws that also govern the privacy and security of health information in some circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts.

Efforts to ensure that our internal business processes and business arrangements with third parties will comply with applicable healthcare laws and regulations will involve substantial costs. It is possible that governmental authorities will conclude that our business practices may not comply with current or future statutes, regulations or case law involving applicable fraud and abuse or other healthcare laws and regulations. If our operations are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, damages, fines, disgorgement, imprisonment, exclusion from government funded healthcare programs, such as Medicare and Medicaid and other federal healthcare programs, contractual damages, reputational harm, diminished profits and future earnings, additional integrity reporting and oversight obligations, and the curtailment or restructuring of our operations, any of which could adversely affect our ability to operate our business and our results of operations. If any of the physicians or other healthcare providers or entities with whom we expect to do business is found to be not in compliance with applicable laws, they may be subject to significant criminal, civil and administrative sanctions, including exclusions from government funded healthcare programs, which could have a material adverse effect on our business, results of operations, financial condition and prospects.

***Recently enacted and future legislation may increase the difficulty and cost for us to obtain marketing approval of and commercialize our product candidates and decrease the prices we may obtain.***

In the United States and some foreign jurisdictions, there have been a number of legislative and regulatory changes and proposed changes regarding the healthcare system that could prevent or delay marketing approval of our product candidates, restrict or regulate post-approval activities and affect our ability to profitably sell any product candidates for which we obtain marketing approval.

For example, in March 2010, the ACA was signed into law. The ACA is a sweeping law intended to broaden access to health insurance, reduce or constrain the growth of healthcare spending, enhance remedies against fraud and abuse, add new transparency requirements for the healthcare and health insurance industries, impose new taxes and fees on the health industry and impose additional health policy reforms.

Among the provisions of the ACA of importance to our potential product candidates are the following:

- annual fees and taxes on manufacturers of certain branded prescription drugs;
- an annual, nondeductible fee on any entity that manufactures or imports specified branded prescription drugs and biologic products;
- a Medicare Part D coverage gap discount program, in which manufacturers must now agree to offer 70% point-of-sale discounts off negotiated prices of applicable brand drugs to eligible beneficiaries during their coverage gap period, as a condition for the manufacturer's outpatient drugs to be covered under Medicare Part D;
- a new methodology by which rebates owed by manufacturers under the Medicaid Drug Rebate Program are calculated for drugs that are inhaled, infused, instilled, implanted or injected;
- an increase in the statutory minimum rebates a manufacturer must pay under the Medicaid Drug Rebate Program and extended the rebate program to individuals enrolled in Medicaid managed care organizations;
- expansion of healthcare fraud and abuse laws, including the False Claims Act and the federal Anti-Kickback Statute, new government investigative powers, and enhanced penalties for noncompliance;
- extension of manufacturers' Medicaid rebate liability;
- expansion of eligibility criteria for Medicaid programs;
- expansion of the entities eligible for discounts under the Public Health Service pharmaceutical pricing program;
- requirements to report financial arrangements with physicians, as defined by such law, and teaching hospitals;
- a requirement to annually report drug samples that manufacturers and distributors provide to physicians; and
- a Patient-Centered Outcomes Research Institute to oversee, identify priorities in, and conduct comparative clinical effectiveness research, along with funding for such research.

There have been executive, judicial and Congressional challenges to repeal or replace certain aspects of the ACA, including measures taken during the former U.S. president's administration. The former president of the United States signed Executive Orders and other directives designed to delay the implementation of certain provisions of the ACA or otherwise circumvent some of the requirements for health insurance mandated by the ACA. Concurrently, Congress considered legislation that would repeal or repeal and replace all or part of the ACA. While Congress has not passed comprehensive repeal legislation, it has enacted laws that modify certain provisions of the ACA such as removing penalties, starting January 1, 2019, for not complying with the ACA's individual mandate to carry health insurance, eliminating the implementation of certain ACA-mandated fees, and increasing the point-of-sale discount that is owed by pharmaceutical manufacturers who participate in Medicare Part D. In November 2020, the United States Supreme Court held oral arguments on the U.S. Court of Appeals for the Fifth Circuit's decision that held that the individual mandate is unconstitutional, although it is unclear when a decision will be made or how the United States Supreme Court will rule. On February 10, 2021, the Biden administration withdrew the federal government's support for overturning the ACA. Further, although the Supreme Court has not yet ruled on the constitutionality of the ACA, on January 28, 2021, President Biden issued an executive order to initiate a special enrollment period for purposes of obtaining health insurance coverage through the ACA marketplace, which began on February 15, 2021 and will remain

open through August 15, 2021. The executive order also instructs certain governmental agencies to review and reconsider their existing policies and rules that limit access to healthcare, including among others, reexamining Medicaid demonstration projects and waiver programs that include work requirements, and policies that create unnecessary barriers to obtaining access to health insurance coverage through Medicaid or the ACA. It is unclear how the Supreme Court ruling, other such litigation and the healthcare reform measures of the Biden administration will impact the ACA and our business.

In addition, other legislative changes have been proposed and adopted since the ACA was enacted. On August 2, 2011, the Budget Control Act of 2011 was signed into law, which, among other things, created the Joint Select Committee on Deficit Reduction to recommend to Congress proposals for spending reductions. The Joint Select Committee did not achieve a targeted deficit reduction, triggering the legislation's automatic reduction to several government programs. These changes include aggregate reductions to Medicare payments to providers of up to 2% per fiscal year, which began in 2013, and due to subsequent legislative amendments to the statute, will remain in effect through 2030, with the exception of a temporary suspension from May 1, 2020 through December 31, 2021 due to the COVID-19 pandemic, unless additional Congressional action is taken. In January 2013, the American Taxpayer Relief Act of 2012 was signed into law, which, among other things, reduced Medicare payments to several providers, and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. These laws may result in additional reductions in Medicare and other healthcare funding.

Further, there has been heightened governmental scrutiny recently over the manner in which drug manufacturers set prices for their marketed products, which has resulted in several Congressional inquiries and proposed and enacted federal and state legislation designed to, among other things, bring more transparency to product pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for drug products. At the federal level, the former president of the United States used several means to propose or implement drug pricing reform, including through federal budget proposals, executive orders, and policy initiatives. It is unclear whether the Biden administration will work to reverse those measures or pursue similar policy initiatives. On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 into law, which eliminates the statutory Medicaid drug rebate cap, currently set at 100% of a drug's average manufacturer price, for single source and innovator multiple source drugs, beginning January 1, 2024. In addition, at the state level, individual states have increasingly passed legislation and implemented regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures, and, in some cases, designed to encourage importation from other countries and bulk purchasing.

We expect that additional state and federal healthcare reform measures will be adopted in the future, particularly in light of the new presidential administration. Such reform measures that may be adopted in the future, may result in more rigorous coverage criteria and in additional downward pressure on the price that we receive for any approved product. The implementation of cost containment measures or other healthcare reforms may prevent us from being able to generate revenue, attain profitability, or commercialize our products.

Legislative and regulatory proposals have been made to expand post-approval requirements and restrict sales and promotional activities for pharmaceutical products. We cannot be sure whether additional legislative changes will be enacted, or whether the FDA regulations, guidance or interpretations will be changed, or what the impact of such changes on the marketing approvals of our product candidates, if any, may be. In addition, increased scrutiny by the U.S. Congress of the FDA's approval process may significantly delay or prevent marketing approval, as well as subject us to more stringent product labeling and post-marketing testing and other requirements. It is also possible that additional governmental action is taken in response to the COVID-19 pandemic.

***Governments outside of the United States tend to impose strict price controls, which may adversely affect our revenues, if any.***

In some countries, particularly the countries of the European Union, or the EU, the pricing of prescription pharmaceuticals is subject to governmental control. In these countries, pricing negotiations with governmental authorities can take considerable time after the receipt of marketing approval for a product. To obtain reimbursement or pricing approval in some countries, we may be required to conduct a clinical trial that compares the cost-effectiveness of our product candidates to other available therapies. If reimbursement of our products is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, our business could be harmed. Political, economic and regulatory developments may further complicate pricing negotiations, and pricing negotiations may continue after reimbursement has been obtained. Reference pricing used by various EU member states, and parallel trade, such as arbitrage between low-priced and high-priced member states, can further reduce prices. 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 products, if approved in those countries. In addition, the recent withdrawal of the United Kingdom from its membership in the EU, often referred to as “Brexit”, could lead to legal and regulatory uncertainty in the United Kingdom and may lead to the United Kingdom and EU adopting divergent laws and regulations, including those related to the pricing of prescription pharmaceuticals, as the United Kingdom determines which EU laws to replicate or replace. If the United Kingdom were to significantly alter its regulations affecting the pricing of prescription pharmaceuticals, we could face significant new costs. As a result, Brexit could impair our ability to transact business in the EU and the United Kingdom.

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

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

Compliance with the FCPA is expensive and difficult, particularly in countries in which corruption is a recognized problem. In addition, the FCPA presents particular challenges in the pharmaceutical industry, because, in many countries, hospitals are operated by the government, and doctors and other hospital employees are considered foreign officials.

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

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

***If we fail to comply with environmental, health and safety laws and regulations, we could become subject to fines or penalties or incur costs that could harm our business.***

We and our third-party contractors are subject to numerous foreign, federal, state and local environmental, health and safety laws and regulations, including those governing laboratory procedures and the handling, use, storage, treatment and disposal of hazardous materials and wastes. Our operations involve the use of hazardous and flammable materials, including chemicals and biological materials. Our operations also produce hazardous waste products. We generally contract with third parties for the disposal of these materials and wastes. We cannot eliminate the risk of contamination or injury from these materials. In the event of contamination or injury resulting from our use of hazardous materials, we could be held liable for any resulting damages, and any liability could exceed our resources, including any available insurance. We could also be held liable for unexpected safety events that could happen in our business offices.

In addition, our leasing and operation of real property may subject us to liability pursuant to certain of these laws or regulations. Under existing U.S. environmental laws and regulations, current or previous owners or operators of real property and entities that disposed or arranged for the disposal of hazardous substances may be held strictly, jointly and severally liable for the cost of investigating or remediating contamination caused by hazardous substance releases, even if they did not know of and were not responsible for the releases.

We could incur significant costs and liabilities which may adversely affect our financial condition and operating results for failure to comply with such laws and regulations, including, among other things, civil or criminal fines and penalties, property damage and personal injury claims, costs associated with upgrades to our facilities or changes to our operating procedures, or injunctions limiting or altering our operations.

Although we maintain liability insurance to cover us for costs and expenses we may incur due to injuries to our employees, this insurance may not provide adequate coverage against potential liabilities. We do not maintain insurance for environmental liability or toxic tort claims that may be asserted against us in connection with our storage or disposal of biological, hazardous or radioactive materials.

In addition, we may incur substantial costs in order to comply with current or future environmental, health and safety laws and regulations. These current or future laws and regulations, which are becoming increasingly more stringent, may impair our research, development or production efforts. Our failure to comply with these laws and regulations also may result in substantial fines, penalties or other sanctions.

***We are subject to certain U.S. and certain foreign anti-corruption, anti-money laundering, export control, sanctions and other trade laws and regulations. We can face serious consequences for violations.***

U.S. and foreign anti-corruption, anti-money laundering, export control, sanctions and other trade laws and regulations prohibit, among other things, companies and their employees, agents, CROs, CMOs, legal counsel, accountants, consultants, contractors and other partners from authorizing, promising, offering, providing, soliciting, or receiving directly or indirectly, corrupt or improper payments or anything else of value to or from recipients in the public or private sector. Violations of these laws can result in substantial criminal fines and civil penalties, imprisonment, the loss of trade privileges, debarment, tax reassessments, breach of contract and fraud litigation, reputational harm and other consequences. We have direct or indirect interactions with officials and employees of government agencies or government-affiliated hospitals, universities and other

organizations. We also expect our non-U.S. activities to increase over time. We expect to rely on third parties for research, preclinical studies and clinical trials and/or to obtain necessary permits, licenses, patent registrations and other marketing approvals. We can be held liable for the corrupt or other illegal activities of our personnel, agents, or partners, even if we do not explicitly authorize or have prior knowledge of such activities.

Any violations of the laws and regulations described above may result in substantial civil and criminal fines and penalties, imprisonment, the loss of export or import privileges, debarment, tax reassessments, breach of contract and fraud litigation, reputational harm and other consequences.

***We are developing our current product candidates, and may continue to develop future product candidates, in combination with other therapies, which would expose us to additional risks.***

We are developing our current product candidates in combination with one or more currently approved cancer therapies or therapies in development. Even if any of our current or future product candidates were to receive marketing approval or be commercialized for use in combination with other existing therapies, we would continue to be subject to the risks that the FDA or comparable foreign regulatory authorities could revoke approval of the therapy used in combination with any of our product candidates, or safety, efficacy, manufacturing or supply issues could arise with these existing therapies. In addition, it is possible that existing therapies with which our product candidates are approved for use could themselves fall out of favor or be relegated to later lines of treatment. This could result in the need to identify other combination therapies for our product candidates or our own products being removed from the market or being less successful commercially.

We may also evaluate our current product candidates in combination with one or more other cancer therapies that have not yet been approved for marketing by the FDA or comparable foreign regulatory authorities. We will not be able to market and sell any product candidate in combination with any such unapproved cancer therapies that do not ultimately obtain marketing approval.

If the FDA or comparable foreign regulatory authorities do not approve or withdraw their approval of these other therapies, or if safety, efficacy, commercial adoption, manufacturing or supply issues arise with the therapies we choose to evaluate in combination with any of our current or future product candidates, we may be unable to obtain approval of or successfully market any one or all of the current or future product candidates we develop. Additionally, if the third-party providers of therapies or therapies in development used in combination with our current or future product candidates are unable to produce sufficient quantities for clinical trials or for commercialization of our current or future product candidates, or if the cost of combination therapies are prohibitive, our development and commercialization efforts would be impaired, which would have an adverse effect on our business, financial condition, results of operations and growth prospects.

***We have never commercialized a product candidate as a company before and currently lack the comprehensive, fully-staffed expertise, personnel and resources to successfully commercialize any products on our own or together with suitable collaborators.***

We have never commercialized a product candidate as a company. We may license certain rights with respect to our product candidates to collaborators, and rely on the assistance and guidance of those collaborators. For product candidates for which we retain commercialization rights and marketing approval, we will have to develop our own sales, marketing and supply organization or outsource these activities to a third party.

Factors that may affect our ability to commercialize our product candidates, if approved, on our own include recruiting and retaining adequate numbers of effective sales, marketing, and market access personnel, developing and producing adequate educational and marketing programs to increase public acceptance of our approved product candidates, ensuring regulatory compliance of our company, all communications and

materials in the promotional domain, employees and third parties under applicable healthcare laws, and other unforeseen costs associated with creating an independent sales and marketing organization. Developing a sales and marketing organization will be expensive and time-consuming and could delay the launch of our product candidates upon approval. We may not be able to build an effective sales and marketing organization. Alternatively, if we choose to collaborate, either globally or on a territory-by-territory basis, with third parties that have direct sales forces and established distribution systems, either to augment our own sales force and distribution systems or in lieu of our own sales force and distribution systems, we will be required to negotiate and enter into arrangements with such third parties relating to the proposed collaboration and such arrangements may prove to be less profitable than commercializing the product on our own. If we are unable to build our own distribution and marketing capabilities or to find suitable partners for the commercialization of our product candidates, we may not generate revenues from them or be able to reach or sustain profitability.

## Risks related to our reliance on third parties

***We rely, and intend to continue to rely, on third parties to conduct our clinical trials and perform some of our research and potential preclinical studies. If these third parties do not satisfactorily carry out their contractual duties, fail to comply with applicable regulatory requirements or do not meet expected deadlines, our development programs may be delayed or subject to increased costs or we may be unable to obtain regulatory approval, each of which may have an adverse effect on our business, financial condition, results of operations and prospects.***

We do not have the ability to independently conduct all aspects of our clinical trials ourselves. As a result, we are dependent on third parties to conduct our ongoing and planned clinical trials of DAY101 and pimasertib, and any preclinical studies and clinical trials of any future product candidates. The timing of the initiation and completion of these trials will therefore be partially controlled by such third parties and may result in delays to our development programs. Specifically, we expect CROs, independent clinical investigators and consultants to play a significant role in the conduct of these trials and the subsequent collection and analysis of data. For example, in addition to the Phase 1 clinical trial run by Dana Farber Cancer Institute in collaboration with PNOC, the Children's Oncology Group, a National Cancer Institute supported clinical trials group and the world's largest organization devoted exclusively to childhood and adolescent cancer research, is developing a group-wide clinical trial of DAY101 in relapsed Langerhans cell histiocytosis. However, these investigators, CROs and other third parties are not our employees, and we will not be able to control all aspects of their activities. Nevertheless, we are responsible for ensuring that each clinical trial is conducted in accordance with the applicable protocol and legal, regulatory and scientific standards, and our reliance on the investigators, CROs and other third parties does not relieve us of our regulatory responsibilities. We and our CROs are required to comply with GCP requirements, which are regulations and guidelines enforced by the FDA for product candidates in clinical development. Regulatory authorities enforce these GCP requirements through periodic inspections of trial sponsors, clinical trial investigators and clinical trial sites. If we or any of our CROs or clinical trial sites fail to comply with applicable GCP requirements, the data generated in our clinical trials may be deemed unreliable, and the FDA may require us to perform additional clinical trials before approving our marketing applications. We cannot assure you that, upon inspection, the FDA will determine that our clinical trials comply with GCPs. In addition, our clinical trials must be conducted with product produced under cGMP regulations. Our failure or the failure of third parties on whom we rely to comply with these regulations may require us to stop and/or repeat clinical trials, which would delay the marketing approval process.

There is no guarantee that any such CROs, clinical trial investigators or other third parties on which we rely will devote adequate time and resources to our development activities or perform as contractually required. If any of these third parties fail to meet expected deadlines, adhere to our clinical protocols or meet regulatory requirements, otherwise perform in a substandard manner, or terminate their engagements with us, the

timelines for our development programs may be extended or delayed or our development activities may be suspended or terminated. If our clinical trial site terminates for any reason, we may experience the loss of follow-up information on subjects enrolled in such clinical trial unless we are able to transfer those subjects to another qualified clinical trial site, which may be difficult or impossible.

In addition, with respect to investigator-sponsored trials that may be conducted, we would not control the design or conduct of these trials, and it is possible that the FDA will not view these investigator-sponsored trials as providing adequate support for future clinical trials or market approval, whether controlled by us or third parties, for any one or more reasons, including elements of the design or execution of the trials or safety concerns or other trial results. We expect that such arrangements will provide us certain information rights with respect to the investigator-sponsored trials, including access to and the ability to use and reference the data, including for our own regulatory submissions, resulting from the investigator-sponsored trials. However, we would not have control over the timing and reporting of the data from investigator-sponsored trials, nor would we own the data from the investigator- sponsored trials. If we are unable to confirm or replicate the results from the investigator-sponsored trials or if negative results are obtained, we would likely be further delayed or prevented from advancing further clinical development. Further, if investigators or institutions breach their obligations with respect to the clinical development of our product candidates, or if the data proves to be inadequate compared to the firsthand knowledge we might have gained had the investigator-sponsored trials been sponsored and conducted by us, then our ability to design and conduct any future clinical trials ourselves may be adversely affected. The investigators may design clinical trials with clinical endpoints that are more difficult to achieve, or in other ways that increase the risk of negative clinical trial results compared to clinical trials that we may design on our own. Negative results in investigator-sponsored clinical trials could have a material adverse effect on our efforts to obtain regulatory approval for our product candidates and the public perception of our product candidates. Additionally, the FDA may disagree with the sufficiency of our right of reference to the preclinical, manufacturing or clinical data generated by these investigator-sponsored trials, or our interpretation of preclinical, manufacturing or clinical data from these investigator-sponsored trials. If so, the FDA may require us to obtain and submit additional preclinical, manufacturing, or clinical data.

Furthermore, these third parties may also have relationships with other entities, some of which may be our competitors for whom they may also be conducting clinical trials or other pharmaceutical product development activities that could harm our competitive position. If these third parties do not successfully carry out their contractual duties, meet expected deadlines or conduct our clinical trials in accordance with regulatory requirements or our stated protocols, we will not be able to obtain, or may be delayed in obtaining, marketing approvals for DAY101, pimasertib or any future product candidates and will not be able to, or may be delayed in our efforts to, successfully commercialize our products.

***The manufacture of our product candidates is complex. Our third-party manufacturers may encounter difficulties in production, which could delay or entirely halt their ability to supply our product candidates for clinical trials or, if approved, for commercial sale.***

We do not have any manufacturing facilities, and we currently contract with certain third party manufacturers in China. We rely, and expect to continue to rely, on third parties for the manufacture of our product candidates for clinical testing, product development purposes, to support regulatory application submissions, as well as for commercial manufacture if any of our product candidates obtain marketing approval. In addition, we expect to contract with analytical laboratories for release and stability testing of our product candidates. This reliance on third parties increases the risk that we will not have sufficient quantities of our product candidates or products or such quantities at an acceptable cost or quality, which could delay, prevent or impair our development or commercialization efforts. For example, the extent to which the COVID-19 pandemic impacts our ability to

procure sufficient supplies for the development of our product candidates will depend on the severity and duration of the spread of the virus and the actions undertaken to contain COVID-19 or treat its effects. In addition, any disruption in production or inability of our manufacturers specifically in China to produce adequate quantities to meet our needs, whether as a result of a natural disaster or other causes, could impair our ability to operate our business on a day-to-day basis and to continue our development of our product candidates. Furthermore, since these manufacturers are located in China, we are exposed to the possibility of product supply disruption and increased costs in the event of changes in the policies of the United States or Chinese governments, political unrest or unstable economic conditions in China. Any of these matters could materially adversely affect our business, financial condition and results of operations. In addition, disruptions in logistics routes and transportation capabilities could disrupt our supply chain. And, if we experience unexpected spikes in demand over time, we risk running out of our necessary supplies.

We may be unable to establish any agreements with third-party manufacturers or do so on favorable terms. Even if we are able to establish agreements with third-party manufacturers, reliance on third-party manufacturers entails additional risks, including:

- reliance on the third party for regulatory, compliance and quality assurance;
- reliance on the third party for product development, analytical testing, and data generation to support regulatory applications;
- operations of our third-party manufacturers or suppliers could be disrupted by conditions unrelated to our business or operations, including the bankruptcy of the manufacturer or supplier, the issuance of an FDA Form 483 notice or warning letter, or other enforcement action by FDA or other regulatory authority;
- the possible breach of the manufacturing agreement by the third party;
- the possible misappropriation of our proprietary information, including our trade secrets and know-how;
- the possible termination or nonrenewal of the agreement by the third party at a time that is costly or inconvenient for us;
- the possible termination or nonrenewal of the agreement by the third party at a time that is costly or inconvenient for us;
- carrier disruptions or increased costs that are beyond our control; and
- failure to deliver our drugs under specified storage conditions and in a timely manner.

We have only limited supply arrangements in place with respect to our product candidates, and these arrangements do not extend to commercial supply. We acquire all key materials on a purchase order basis. As a result, we do not have long-term committed arrangements with respect to our product candidates and other materials. We will need to establish one or more agreements with third parties to develop and scale up the drug manufacturing process, conduct drug testing, and generate data to support a regulatory submission. If we obtain marketing approval for any of our product candidates, we will need to establish an agreement for commercial manufacture with a third party.

In addition, we are dependent on a sole supplier for certain components of our manufacturing process. Even if we are able to replace any raw materials or other materials with an alternative, such alternatives may cost more, result in lower yields or not be as suitable for our purposes. In addition, some of the materials that we use to manufacture our product candidates are complex materials, which may be more difficult to substitute. Therefore, any disruptions arising from our sole suppliers could result in delays and additional regulatory submissions.

Third-party manufacturers may not be able to comply with cGMP regulations or similar regulatory requirements outside of the United States. If the FDA determines that our CMOs are not in compliance with FDA laws and regulations, including those governing cGMPs, the FDA may approve an NDA until the deficiencies are corrected or we replace the manufacturer in our application with a manufacturer that is in compliance. Moreover, our failure, or the failure of our third-party manufacturers and suppliers, to comply with applicable regulations could result in sanctions being imposed on us, including clinical holds, fines, injunctions, civil penalties, seizures or recalls of product candidates or products, operating restrictions and criminal prosecutions, any of which could significantly and adversely affect supplies of our products. In addition, approved products and the facilities at which they are manufactured are required to maintain ongoing compliance with extensive FDA requirements and the requirements of other similar agencies, including ensuring that quality control and manufacturing procedures conform to cGMP requirements. As such, our CMOs are subject to continual review and periodic inspections to assess compliance with cGMPs. Furthermore, although we do not have day-to-day control over the operations of our CMOs, we are responsible for ensuring compliance with applicable laws and regulations, including cGMPs.

In addition, our third-party manufacturers and suppliers are subject to numerous environmental, health and safety laws and regulations, including those governing the handling, use, storage, treatment and disposal of waste products, and failure to comply with such laws and regulations could result in significant costs associated with civil or criminal fines and penalties for such third parties. Based on the severity of regulatory actions that may be brought against these third parties in the future, our clinical or commercial supply of drug and packaging and other services could be interrupted or limited, which could harm our business.

Our product candidates and any products that we may develop may compete with other product candidates and products for access to manufacturing facilities. As a result, we may not obtain access to these facilities on a priority basis or at all. There are a limited number of manufacturers that operate under cGMP regulations and that might be capable of manufacturing for us.

As we prepare for later-stage clinical trials and potential commercialization, we will need to take steps to increase the scale of production of our product candidates. We have not yet scaled up the manufacturing process for any of our product candidates. Third party manufacturers may be unable to successfully increase the manufacturing capacity for any of our product candidates in a timely or cost-effective manner, or at all. In addition, quality issues may arise during scale-up or commercial activities. For example, if microbial, viral or other contaminations are discovered in our product candidates or in the manufacturing facilities in which our product candidates are made, such manufacturing facilities may need to be closed for an extended period of time to investigate and remedy the contamination.

Any performance failure on the part of our existing or future manufacturers could delay clinical development or marketing approval. We do not currently have arrangements in place for redundant supply or a second source for bulk drug substance. If our current CMOs for clinical testing cannot perform as agreed, we may be required to replace such CMOs. Although we believe that there are several potential alternative manufacturers who could manufacture our product candidates, we may incur added costs and delays in identifying and qualifying any such replacement manufacturer or be able to reach agreement with any alternative manufacturer. Further, our third-party manufacturers may experience manufacturing or shipping difficulties due to resource constraints or as a result of natural disasters, labor disputes, unstable political environments, or public health epidemics such as the recent COVID-19 pandemic. If our current third-party manufacturers cannot perform as agreed, we may be required to replace such manufacturers and we may be unable to replace them on a timely basis or at all.

Our current and anticipated future dependence upon others for the manufacture of our product candidates or products may adversely affect our future profit margins and our ability to commercialize any products that obtain marketing approval on a timely and competitive basis.

***We may enter into collaborations with third parties for the development and commercialization of our product candidates. If those collaborations are not successful, we may not be able to capitalize on the market potential of these product candidates.***

We may seek third-party collaborators for the development and commercialization of some of our product candidates on a select basis. We have not entered into any collaborations to date. Our likely collaborators for any future collaboration arrangements include large and mid-size pharmaceutical companies, regional and national pharmaceutical companies and biotechnology companies. We face significant competition in seeking appropriate collaborators. Our ability to reach a definitive agreement for a future collaboration will depend, among other things, upon our assessment of the future collaborator's resources and expertise, the terms and conditions of the proposed collaboration and the proposed collaborator's evaluation of a number of factors.

If we do enter into any such arrangements with any third parties, we will likely have limited control over the amount and timing of resources that our future collaborators dedicate to the development or commercialization of our product candidates. Our ability to generate revenues from these arrangements will depend on our future collaborators' abilities and efforts to successfully perform the functions assigned to them in these arrangements. Collaborations with future collaborators involving our product candidates would pose numerous risks to us, including the following:

- collaborators have significant discretion in determining the efforts and resources that they will apply to these collaborations and may not perform their obligations as expected;
- collaborators may de-emphasize or not pursue development and commercialization of our product candidates or may elect not to continue or renew development or commercialization programs based on clinical trial results, changes in the collaborators' strategic focus, including as a result of a sale or disposition of a business unit or development function, or available funding or external factors such as an acquisition that diverts resources or creates competing priorities;
- collaborators may delay clinical trials, provide insufficient funding for a clinical trial program, stop a clinical trial or abandon a product candidate, repeat or conduct new clinical trials or require a new formulation of a product candidate for clinical testing;
- collaborators could independently develop, or develop with third parties, products that compete directly or indirectly with our products or product candidates if the collaborators believe that competitive products are more likely to be successfully developed or can be commercialized under terms that are more economically attractive than ours;
- a collaborator with marketing and distribution rights to multiple products may not commit sufficient resources to the marketing and distribution of our product relative to other products;
- collaborators may not properly obtain, maintain, defend or enforce our intellectual property rights or may use our proprietary information and intellectual property in such a way as to invite litigation or other intellectual property related proceedings that could jeopardize or invalidate our proprietary information and intellectual property or expose us to potential litigation or other intellectual property related proceedings;
- disputes may arise between the collaborators and us that result in the delay or termination of the research, development or commercialization of our products or product candidates or that result in costly litigation or arbitration that diverts management attention and resources;

- collaborations may be terminated and, if terminated, may result in a need for additional capital to pursue further development or commercialization of the applicable product candidates;
- collaboration agreements may not lead to development or commercialization of product candidates in the most efficient manner or at all; and
- if a future collaborator of ours were to be involved in a business combination, the continued pursuit and emphasis on our product development or commercialization program could be delayed, diminished or terminated.

If we establish one or more collaborations, all of the risks relating to product development, regulatory approval and commercialization described herein would also apply to the activities of any such future collaborators.

## Risks related to employee matters and our operations

***Our future success depends on our ability to retain our executive officers and key employees and to attract, retain and motivate qualified personnel and manage our human capital.***

Our ability to compete in the highly competitive biotechnology and pharmaceutical industries depends upon our ability to attract, motivate and retain highly qualified managerial, scientific and medical personnel. We are highly dependent on the development and management expertise of Jeremy Bender, Ph.D., M.B.A., our Chief Executive Officer, Samuel Blackman, M.D., Ph.D, our Chief Medical Officer, as well as the other members of our management team, other key employees and advisors. We currently do not maintain key person insurance on these individuals. Although we have entered into employment agreements with our executive officers, each of them may terminate their employment with us at any time.

Our industry has experienced a high rate of turnover in recent years. Our ability to compete in the highly competitive pharmaceuticals industry depends upon our ability to attract, retain and motivate highly skilled and experienced personnel with scientific, clinical, regulatory, manufacturing and management skills and experience. We conduct our operations in the greater San Francisco Bay Area, a region that is home to other pharmaceutical companies as well as many academic and research institutions, resulting in fierce competition for qualified personnel. We may not be able to attract or retain qualified personnel in the future due to the intense competition for a limited number of qualified personnel among pharmaceutical companies. Many of the other pharmaceutical companies against which we compete have greater financial and other resources, different risk profiles and a longer history in the industry than we do. Our competitors may provide higher compensation, more diverse opportunities and/or better opportunities for career advancement. In addition, as our business changes, key personnel may not want to work for a larger, commercial enterprise. Any or all of these competing factors may limit our ability to continue to attract and retain high quality personnel, which could negatively affect our ability to successfully develop and commercialize our product candidates and to grow our business and operations as currently contemplated.

***We will need to grow the size and capabilities of our organization, and we may experience difficulties in managing this growth.***

Our employee headcount has significantly grown from six full-time employees as of December 31, 2019 to 20 full-time employees as of March 31, 2021. We expect significant growth in the number of our employees and the scope of our operations, particularly in the areas of clinical development, clinical operations, manufacturing, regulatory affairs and, if any of our product candidates receives marketing approval, sales, marketing and distribution. To manage our anticipated future growth, we must continue to implement and improve our managerial, operational and financial systems, expand our facilities and continue to recruit and train additional qualified personnel. Due to our limited financial resources and the limited experience of our management team

in managing a company with such anticipated growth and with developing sales, marketing and distribution infrastructure, we may not be able to effectively manage the expansion of our operations or recruit and train additional qualified personnel. The expansion of our operations may lead to significant costs and may divert our management and business development resources.

Further, we currently rely, and for the foreseeable future will continue to rely, in substantial part on certain third-party contract organizations, advisors and consultants to provide certain services, including assuming substantial responsibilities for the conduct of our clinical trials and the manufacture of DAY101, pimasertib, or any future product candidates. We cannot assure you that the services of such third-party contract organizations, advisors and consultants will continue to be available to us on a timely basis when needed, or that we can find qualified replacements. In addition, if we are unable to effectively manage our outsourced activities or if the quality or accuracy of the services provided by our vendors or consultants is compromised for any reason, our clinical trials may be extended, delayed or terminated, and we may not be able to obtain marketing approval of DAY101, pimasertib, or any future product candidates or otherwise advance our business. We cannot assure you that we will be able to properly manage our existing vendors or consultants or find other competent outside vendors and consultants on economically reasonable terms, or at all.

If we are not able to effectively manage growth and expand our organization, we may not be able to successfully implement the tasks necessary to further develop and commercialize DAY101, pimasertib, our other pipeline product candidates or any future product candidates and, accordingly, may not achieve our research, development and commercialization goals.

***Our employees, clinical trial investigators, CROs, CMOs, consultants, vendors and any potential commercial partners may engage in misconduct or other improper activities, including non-compliance with regulatory standards and requirements and insider trading.***

We are exposed to the risk of fraud or other misconduct by our employees, clinical trial investigators, CROs, CMOs, consultants, vendors and any potential commercial partners. Misconduct by these parties could include intentional, reckless and/or negligent conduct or disclosure of unauthorized activities to us that violates: (i) FDA regulations or those of comparable foreign regulatory authorities, including those laws that require the reporting of true, complete and accurate information, (ii) manufacturing standards, (iii) federal and state health and data privacy, security, fraud and abuse, government price reporting, transparency reporting requirements, and other healthcare laws and regulations in the United States and abroad, (iv) sexual harassment and other workplace misconduct, or (v) laws that require the true, complete and accurate reporting of financial information or data. Such misconduct could also involve the improper use of information obtained in the course of clinical trials, which could result in regulatory sanctions and cause serious harm to our reputation.

We intend to adopt a code of conduct applicable to all of our employees prior to the completion of this offering, as well as a disclosure program and other applicable policies and procedures, 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 civil, criminal and administrative penalties, damages, fines, disgorgement, imprisonment, exclusion from government funded healthcare programs, such as Medicare, Medicaid and other federal healthcare programs, contractual damages, reputational harm, diminished profits and future earnings, additional integrity reporting and oversight obligations, and the curtailment or restructuring of our operations, any of which could adversely affect our ability to operate our business and our results of operations.

***If our security measures are compromised, or our information technology systems or those of our CROs, CMOs, vendors, contractors, consultants, or other third party partners fail or suffer security breaches, cyber-attacks, loss or leakage of data and other disruptions, this could result in a material disruption of our development programs, compromise sensitive information related to our business or other personal information or prevent us from accessing critical information, potentially exposing us to liability, harm our reputation, or otherwise adversely affecting our business.***

In the ordinary course of business, we may collect, process, store, and transmit proprietary, confidential, and sensitive information (including but not limited to intellectual property, trade secrets, proprietary business information, personal information, and protected health information, or PHI). It is critical that we do so in a secure manner to maintain the confidentiality, integrity, and availability of such information. We depend on information technology and telecommunications systems for significant elements of our operations and we have installed, and expect to expand, a number of enterprise software systems that affect a broad range of business processes and functional areas, including, for example, systems handling human resources, financial reporting and controls, customer relationship management, regulatory compliance, and other infrastructure operations. We face a number of risks relative to protecting this critical information, including loss of access risk, inappropriate use or disclosure, inappropriate modification, and the risk of our being unable to adequately monitor, audit, and modify our controls over our critical information. This risk extends to the third-parties with whom we work, as we rely on a number of third parties to operate our critical business systems and process confidential, proprietary, and sensitive information.

Despite the implementation of security measures, given the size, complexity, and increasing amounts of proprietary, sensitive, and confidential information maintained by our internal information technology systems and those of our CROs, CMOs, vendors, contractors, consultants, and other third party partners are potentially vulnerable to breakdown, service interruptions, system malfunction, accidents by our personnel or third party partners, natural disasters, terrorism, global pandemics, war and telecommunication and electrical failures, as well as security breaches from inadvertent or intentional actions by our personnel or those of our CROs, CMOs, vendors, contractors, consultants, business partners and/or other third party partners, or from cyber-attacks by malicious third parties (including through viruses, worms, malicious code, malware, ransomware, denial-of-service attacks, social engineering and other means to affect service reliability and the confidentiality, integrity and availability of information), which may compromise our system infrastructure, or that of our CROs, CMOs, vendors, contractors, consultants, and other third party partners, or lead to data leakage.

The risk of a security breach or disruption, particularly through cyber-attacks or cyber intrusion, including by computer hackers, viruses, foreign governments, and cyber terrorists, has generally increased as the number, intensity and sophistication of attempted attacks and intrusions from around the world have increased. The COVID-19 pandemic is generally increasing the attack surface available for exploitation, as more companies and individuals work online and work remotely, and as such, the risk of a cybersecurity incident potentially occurring, and our investment in risk mitigations against such an incident, is increasing. For example, there has been an increase in phishing and spam emails as well as social engineering attempts from “hackers” hoping to use the recent COVID-19 pandemic to their advantage. We may not be able to anticipate all types of security threats, nor may we be able to implement preventive measures effective against all such security threats. The techniques used by cyber criminals change frequently, may not be recognized until launched, and can originate from a wide variety of sources, including outside groups such as external service providers, organized crime affiliates, terrorist organizations or hostile foreign governments or agencies. To the extent that any disruption or security breach were to result in a loss of, or damage to, our data or applications, or those of our CROs, CMOs, vendors, contractors, consultants, and other third party partners, or inappropriate disclosure of confidential, sensitive, or proprietary information, we could incur liability and reputational damage and the further development and commercialization of DAY101, pimasertib, or any future product candidates could be

delayed. Any breach, loss or compromise of proprietary, sensitive, or confidential information may also subject us to civil fines and penalties, including under HIPAA, and other relevant state and federal privacy laws in the United States. For example, the California Consumer Privacy Act of 2018, or the CCPA, imposes a private right of action for security breaches that could lead to some form of remedy including regulatory scrutiny, fines, private right of action settlements, and other consequences.

The costs related to significant security breaches or disruptions could be material and exceed the limits of the cybersecurity insurance we maintain against such risks. If the information technology systems of our CROs, CMOs, vendors, contractors, consultants, and other third party partners become subject to disruptions or security breaches, we may have insufficient recourse against such third parties and we may have to expend significant resources to mitigate the impact of such an event, and to develop and implement protections to prevent future events of this nature from occurring.

We cannot assure you that our data protection efforts and our investment in information technology will prevent significant breakdowns, data leakages, breaches in our systems, or those of our CROs, CMOs, vendors, contractors, consultants, and other third party partners, or other cyber incidents that could have a material adverse effect upon our reputation, business, operations or financial condition. For example, if such an event were to occur and cause interruptions in our operations, or those of our third-party CROs, CMOs, vendors and other contractors and consultants, it could result in a material disruption of our programs and the development of our product candidates could be delayed. In addition, the loss of clinical trial data for DAY101, pimasertib, or any other product candidates could result in delays in our marketing approval efforts and significantly increase our costs to recover or reproduce the data. Furthermore, significant disruptions of our internal information technology systems or those of our third-party CROs, CMOs, vendors and other contractors and consultants, or security breaches could result in the loss, misappropriation and/or unauthorized access, use, or disclosure of, or the prevention of access to, confidential information (including trade secrets or other intellectual property, proprietary business information and personal information), which could result in financial, legal, business and reputational harm to us. For example, any such event that leads to unauthorized access, use, or disclosure of personal information, including personal information regarding our clinical trial subjects or personnel, could harm our reputation directly, compel us to comply with federal and/or state breach notification laws and foreign law equivalents, subject us to mandatory corrective action, and otherwise subject us to liability under laws and regulations that protect the privacy and security of personal information, which could result in significant legal and financial exposure and reputational damages that could potentially have an adverse effect on our business.

We are required to comply with laws, rules and regulations that require us to maintain the security of personal information. We may have contractual and other legal obligations to notify relevant stakeholders of security breaches. Failure to prevent or mitigate cyber-attacks could result in the unauthorized access to sensitive, confidential, or proprietary information. Most jurisdictions have enacted laws requiring companies to notify individuals, regulatory authorities, and others of security breaches involving certain types of data. In addition, our agreements with CROs, CMOs, vendors, contractors, consultants, and other third party partners may require us to notify them in the event of a security breach. Such mandatory disclosures are costly, could lead to negative publicity, may cause our customers to lose confidence in the effectiveness of our security measures and require us to expend significant capital and other resources to respond to and/or alleviate problems caused by the actual or perceived security breach.

The costs to respond to a security breach and/or to mitigate any security vulnerabilities that may be identified could be significant, our efforts to address these issues may not be successful, and these issues could result in interruptions, delays, negative publicity, loss of customer trust, diminished use of our products as well as other harms to our business and our competitive position. Remediation of any potential security breach may involve significant time, resources, and expenses. Any security breach may result in regulatory inquiries, litigation or other investigations, and can affect our financial and operational condition.

A security breach may cause us to breach customer contracts. Our agreements with certain customers may require us to use industry-standard or reasonable measures to safeguard personal information. We also may be subject to laws that require us to use industry-standard or reasonable security measures to safeguard personal information. A security breach could lead to claims by our customers or other relevant stakeholders that we have failed to comply with such legal or contractual obligations. In addition, our inability to comply with data privacy obligations in our customer contracts or our inability to flow down such obligations from our customers to our CROs, CMOs, vendors, contractors, consultants, and other third party partners may cause us to breach our customer contracts. As a result, we could be subject to legal action or our customers could end their relationships with us. There can be no assurance that the limitations of liability in our contracts would be enforceable or adequate or would otherwise protect us from liabilities or damages.

Litigation resulting from security breaches may adversely affect our business. Unauthorized access to our systems, networks, or physical facilities could result in litigation with our customers or other relevant stakeholders. These proceedings could force us to spend money in defense or settlement, divert management's time and attention, increase our costs of doing business, or adversely affect our reputation.

We may not have adequate insurance coverage for security incidents or breaches, including fines, judgments, settlements, penalties, costs, attorney fees and other impacts that arise out of incidents or breaches. The successful assertion of one or more large claims against us that exceeds available insurance coverage, or results in changes to insurance policies (including premium increases or the imposition of large deductible or co-insurance requirements), could have an adverse effect on our business. In addition, we cannot be sure that our existing insurance coverage and coverage for errors and omissions will continue to be available on acceptable terms or that our insurers will not deny coverage as to any future claim. Our risks are likely to increase as we continue to expand, grow our customer base, and process, store, and transmit increasingly large amounts of proprietary and sensitive data.

***We are subject to stringent and changing laws, regulations and standards, and contractual obligations related to privacy, data protection, and data security. The actual or perceived failure to comply with such obligations could lead to government enforcement actions (which could include civil or criminal penalties), fines and sanctions, private litigation and/or adverse publicity and could negatively affect our operating results and business.***

We and third parties who we work with are or may become subject to numerous domestic and foreign data protection laws and regulations (i.e., laws and regulations that address privacy and data security), the scope of which is changing, subject to differing applications and interpretations, and may be inconsistent among countries, or conflict with other rules. We are or may become subject to the terms of contractual obligations related to privacy, data protection, and data security. The actual or perceived failure by us or related third parties to comply with such obligations could increase our compliance and operational costs, expose us to regulatory scrutiny, actions, fines and penalties, result in reputational harm, lead to a loss of customers, result in litigation and liability, and otherwise cause a material adverse effect on our business, financial condition, and results of operations.

In the United States, numerous federal and state laws and regulations, including federal health information privacy laws, state data breach notification laws, state health information privacy laws and federal and state consumer protection laws (e.g., Section 5 of the Federal Trade Commission Act), that govern the collection, use, disclosure and protection of health-related and other personal information could apply to our operations or the operations of our collaborators. In addition, we may obtain health information from third parties (including research institutions from which we obtain clinical trial data) that are subject to privacy and security requirements under HIPAA, as amended by HITECH. Depending on the facts and circumstances, we could be

subject to civil and criminal penalties if we obtain, use, or disclose individually identifiable health information maintained by a HIPAA-covered entity in a manner that is not authorized or permitted by HIPAA.

The state of California recently enacted the CCPA, which creates new individual privacy rights for California consumers and places increased privacy and data security obligations on entities handling personal information of consumers or households. The CCPA went into effect on January 1, 2020 and may impact our business activities and exemplifies the vulnerability of our business to the evolving regulatory environment related to personal information and protected health information. Additionally, although not effective until January 1, 2023, the California Privacy Rights Act, or the CPRA, which expands upon the CCPA, was passed in the election on November 3, 2020. The CCPA gives (and the CPRA will give) California residents expanded privacy rights, including the right to request correction, access, and deletion of their personal information, the right to opt out of certain personal information sharing, and the right to receive detailed information about how their personal information is processed. The CCPA and CPRA provide for civil penalties and a private right of action for data breaches that is expected to increase data breach litigation. The CCPA and CPRA may increase our compliance costs and potential liability. Additionally, the CCPA has prompted a number of proposals for new federal and state- level privacy legislation, such as in Virginia, Washington, Illinois, and Nebraska, that, could increase our potential liability, increase our compliance costs, and adversely affect our business.

Foreign data protection laws, including Regulation 2016/679, known as the General Data Protection Regulation, or GDPR, may apply to health-related and other personal information obtained outside of the United States. The GDPR imposes strict obligations on businesses, including requiring changes to informed consent practices and more detailed notices for clinical trial subjects and investigators, requiring limitations on data processing, establishing a legal basis for processing personal information, notification of data processing obligations, notification of security incidents to appropriate data protection authorities or data subjects, protecting the security and confidentiality of the personal information, and establishing means for data subjects to exercise rights in relation to their personal information. The GDPR subjects noncompliant companies to fines of up to the greater of 20 million Euros or 4% of their global annual revenues, potential bans on processing of personal information (including clinical trials), and private litigation. To the extent applicable, the GDPR will increase our responsibility and liability in relation to personal information that we process, and we may be required to put in place additional mechanisms and expend additional time and resources to ensure compliance with the EU data protection rules. Additionally, the United Kingdom, or UK, implemented the Data Protection Act effective in May 2018 and statutorily amended in 2019, that substantially implements the GDPR and contains provisions, including UK-specific derogations, for how GDPR is applied in the UK. Changes in these legislations may add additional complexity, variation in requirements, restrictions and potential legal risk, require additional investment in resources for compliance programs, could impact strategies and availability of previously useful data, and could result in increased compliance costs and/or changes in business practices and policies.

In addition, European data protection laws prohibit the transfer of personal information to countries outside of the European Economic Area, or EEA, United Kingdom, and Switzerland, such as the United States, which are not considered by the European Commission to provide an adequate level of data protection. Switzerland has adopted similar restrictions. Although there are legal mechanisms to allow for the transfer of personal information from the EEA, United Kingdom, and Switzerland to the United States and other countries, they are or may become subject to legal challenges that, if successful, could invalidate these mechanisms, restrict our ability to process personal information of Europeans outside of Europe and adversely impact our business. For example, in July 2020, the European Courts of Justice invalidated the EU-U.S. Privacy Shield, which enabled the transfer of personal information from EU to the U.S. for companies that had self-certified to the Privacy Shield on the grounds that the EU-U.S. Privacy Shield failed to offer adequate protections to EU personal information transferred to the United States. While the Court of Justice did not invalidate the use of other data transfer mechanisms such as the Standard Contractual Clauses, the decision has led to some uncertainty regarding the

use of such mechanisms for data transfers to the United States, and the court made clear that reliance on Standard Contractual Clauses alone may not necessarily be sufficient in all circumstances. The use of Standard Contractual Clauses for the transfer of personal information specifically to the United States also remains under review by a number of European data protection supervisory authorities. For example, German and Irish supervisory authorities have indicated that the Standard Contractual Clauses alone provide inadequate protection for EU-U.S. data transfers. Use of the data transfer mechanisms must now be assessed on a case-by-case basis taking into account the legal regime applicable in the destination country, in particular applicable surveillance laws and rights of individuals. The European Data Protection Board, or the EDPB, issued additional guidance regarding the Court of Justice's decision on November 11, 2020 which imposes higher burdens on the use of data transfer mechanisms, such as the Standard Contractual Clauses, for cross-border data transfers.

To comply with this guidance, we may need to implement additional safeguards to further enhance the security of data transferred out of the Europe, which could increase our compliance costs, expose us to further regulatory scrutiny and liability, and adversely affect our business. Further, the European Commission published new versions of the Standard Contractual Clauses for comment. While the comment period ended in December 2020, the European Commission is expected to finalize and implement the new Standard Contractual Clauses in early 2021. Additionally, other countries (e.g., Australia and Japan) have adopted certain legal requirements for cross-border transfers of personal information. These obligations may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another and may conflict with other requirements or our practices. Further, since the transition period for Brexit ended December 31, 2020, there remains some uncertainty regarding cross-border data transfers from Europe to the United Kingdom. The EU issued a draft adequacy decision for personal information transfers from European countries to the U.K. on February 19, 2021. If this adequacy decision is not passed by the EU, it would require that companies implement protection measures such as the Standard Contractual Clauses for data transfers between Europe and the U.K. Some countries also are considering or have passed legislation requiring local storage and processing of data, or similar requirements, which could increase the cost and complexity of our business operations. To comply these requirements and as supervisory authorities continue to issue further guidance, we may need to implement additional safeguards to further enhance the security of data transferred out of Europe, we could suffer additional costs, complaints, or regulatory investigations or fines, and if we are otherwise unable to transfer personal information between and among countries and regions in which we operate, it could affect the manner in which we provide our products and services, the geographical location or segregation of our relevant systems and operations, and could adversely affect our financial results.

Other countries outside of Europe have enacted or are considering enacting similar cross-border data transfer restrictions and laws requiring local data residency and restricting cross-border data transfer, which could increase the cost and complexity of delivering our services and operating our business. For example, Brazil recently enacted the General Data Protection Law (Lei Geral de Proteção de Dados Pessoais or LGPD) (Law No. 13,709/2018), which broadly regulates the processing of personal information and imposes compliance obligations and penalties comparable to those of the GDPR.

We are or may become subject to the terms of external and internal privacy and security policies, representations, certifications, publications related to privacy and security.

Compliance with domestic and foreign privacy, data security, and data protection laws, regulations, and contractual and other obligations could require us to take on more onerous obligations in our contracts, restrict our ability to collect, use and disclose data, or in some cases, impact our ability to operate in certain jurisdictions. The actual or perceived failure to comply with domestic and foreign privacy, data privacy, and data protection laws and regulations could result in government enforcement actions (which could include civil, criminal, and administrative penalties), private litigation and/or adverse publicity and could negatively affect our operating results and business. Moreover, clinical trial subjects about whom we or our potential

collaborators obtain information, as well as the providers who share this information with us, may contractually limit our ability to use and disclose the information. Claims that we have violated individuals' privacy rights, failed to comply with privacy, data security, and data protection laws, or breached our contractual obligations, even if we are not found liable, could be expensive and time consuming to defend and could result in adverse publicity that could harm our business.

***We or the third parties upon whom we depend may be adversely affected by natural disasters and our business continuity and disaster recovery plans may not adequately protect us from a serious disaster.***

Our current operations are primarily located in San Francisco, California. Any unplanned event, such as earthquake, flood, fire, explosion, extreme weather conditions, medical epidemic or pandemic, power shortage, telecommunication failure or other natural or man-made accident or incident that results in our being unable to fully utilize our facilities, or the manufacturing facilities of our third-party contract manufacturers, may have a material and adverse effect on our ability to operate our business, particularly on a daily basis, and have significant negative consequences on our financial and operating conditions. Loss of access to these facilities may result in increased costs, delays in the development of our product candidates or interruption of our business operations, and have a material adverse effect on our business, financial condition, results of operations and prospects. If a natural disaster, power outage or other event occurred that prevented us from using all or a significant portion of our headquarters, that damaged critical infrastructure such as our research facilities or the manufacturing facilities of our third-party contract manufacturers, or that otherwise disrupted operations, it may be difficult or, in certain cases, impossible, for us to continue our business for a substantial period of time. The disaster recovery and business continuity plans we have in place may prove inadequate in the event of a serious disaster or similar event. We may incur substantial expenses as a result of the limited nature of our disaster recovery and business continuity plans, which could have a material adverse effect on our business. As part of our risk management policy, we maintain insurance coverage at levels that we believe are appropriate for our business. However, in the event of an accident or incident at these facilities, we cannot assure you that the amounts of insurance will be sufficient to satisfy any damages and losses. If our facilities, or the manufacturing facilities of our third-party contract manufacturers, are unable to operate because of an accident or incident or for any other reason, even for a short period of time, any or all of our research and development programs may be harmed. Any business interruption could have a material and adverse effect on our business, financial condition, results of operations and prospects.

***Changes in tax laws or regulations that are applied adversely to us may have a material adverse effect on our business, cash flow, financial condition or results of operations.***

New income, sales, use or other tax laws, statutes, rules, regulations or ordinances could be enacted at any time, which could adversely affect our business operations and financial performance. Further, existing tax laws, statutes, rules, regulations or ordinances could be interpreted, changed, modified or applied adversely to us. For example, the Tax Cuts and Jobs Act of 2017, or the Tax Cuts and Jobs Act, enacted many significant changes to the U.S. tax laws. Future guidance from the Internal Revenue Service and other tax authorities with respect to the Tax Cuts and Jobs Act may affect us, and certain aspects of the Tax Cuts and Jobs Act could be repealed or modified in future legislation. For example, the CARES Act modified certain provisions of the Tax Cuts and Jobs Act. In addition, it is uncertain if and to what extent various states will conform to the Tax Cuts and Jobs Act, the CARES Act, or any newly enacted federal tax legislation. Changes in corporate tax rates, the realization of net deferred tax assets relating to our operations, the taxation of foreign earnings, and the deductibility of expenses under the Tax Cuts and Jobs Act, the CARES Act or future reform legislation could have a material impact on the value of our deferred tax assets, could result in significant one-time charges, and could increase our future U.S. tax expense.

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

We have incurred substantial losses during our history and do not expect to become profitable in the near future, and we may never achieve profitability. Unused losses incurred in taxable years beginning on or prior to December 31, 2017, will carry forward to offset future taxable income, if any, until such unused losses expire. Under the Tax Cuts and Jobs Act, as modified by the CARES Act, unused U.S. federal net operating losses generated in tax years beginning after December 31, 2017, will not expire and may be carried forward indefinitely but the deductibility of such federal net operating losses in taxable years beginning after December 31, 2020, is limited to 80% of current year taxable income. It is uncertain if and to what extent various states will conform to the Tax Cuts and Jobs Act or the CARES Act. In addition, both our current and our future unused losses and other tax attributes may be subject to limitation under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, or the Code, if we undergo, or have undergone, an "ownership change," generally defined as a greater than 50 percentage point change (by value) in our equity ownership by certain stockholders over a three-year period. We have not completed a Section 382 study to assess whether an ownership change has occurred or whether there have been multiple ownership changes since our formation due to the complexity and cost associated with such a study and the fact that there may be additional ownership changes in the future. As a result, our net operating loss carryforwards generated in taxable years beginning on or before December 31, 2017, may expire prior to being used, and the deductibility of our net operating loss carryforwards generated in taxable years beginning after December 31, 2017 may be limited, and, if we undergo an ownership change (or if we previously underwent such an ownership change), our ability to use all of our pre-change net operating loss carryforwards and other pre-change tax attributes (such as research tax credits) to offset our post-change income or taxes may be limited. Similar provisions of state tax law may also apply to limit our use of accumulated state tax attributes. In addition, at the state level, there may be periods during which the use of net operating losses is suspended or otherwise limited, which could accelerate or permanently increase state taxes owed. As a result, even if we attain profitability, we may be unable to use all or a material portion of our net operating losses and other tax attributes, which could adversely affect our future cash flows.

***We have engaged, and will continue to engage in strategic transactions that could impact our liquidity, increase our expenses and present significant distractions to our management.***

We have engaged, for instance with affiliates of Takeda Pharmaceutical Company Limited, Viracta Therapeutics, Inc. and Merck KGaA, Darmstadt, Germany, and from time to time, we may consider further strategic transactions, such as acquisitions of companies, businesses or assets and out-licensing or in-licensing of products, product candidates or technologies. Additional potential transactions that we may consider include a variety of different business arrangements, including spin-offs, strategic partnerships, joint ventures, restructurings, divestitures, business combinations and investments. Any such transaction may require us to incur non-recurring or other charges, may increase our near term or long-term expenditures and may pose significant integration challenges or disrupt our management or business, which could adversely affect our operations and financial results. For example, these transactions may entail numerous operational and financial risks, including:

- exposure to unknown liabilities;
- disruption of our business and diversion of our management's time and attention in order to develop acquired products, product candidates or technologies;
- incurrence of substantial debt or dilutive issuances of equity securities to pay for acquisitions;
- higher than expected acquisition and integration costs;

- write-downs of assets or goodwill or impairment charges;
- increased amortization expenses;
- difficulty and cost in combining the operations, systems and personnel of any acquired businesses with our operations, systems and personnel;
- impairment of relationships with key suppliers or customers of any acquired businesses due to changes in management and ownership; and
- inability to retain key employees of any acquired businesses.

## Risks related to our intellectual property

***If we are unable to obtain and maintain patent protection or other necessary rights for our products and technology, or if the scope of the patent protection obtained is not sufficiently broad or our rights under our patents (owned, co-owned or licensed) is not sufficiently broad, our competitors could develop and commercialize products and technology similar or identical to ours, and our ability to successfully commercialize our products and technology may be adversely affected.***

Our commercial success depends in part on our ability to obtain and maintain proprietary or intellectual property protection in the United States and other countries for our current product candidates and future products, as well as our core technologies, including our manufacturing know-how. We strive to protect and enhance the proprietary technology, inventions and improvements that are commercially important to the development of our business by seeking, maintaining and defending our intellectual property, whether developed internally or licensed from third parties. We also rely on trade secrets, know-how, continuing technological innovation and in-licensing opportunities to develop, strengthen and maintain our proprietary position in the field of cancer drug development. Additionally, we intend to rely on regulatory protection afforded through rare drug designations, data exclusivity and market exclusivity as well as patent term extensions, where available.

The patent position of biotechnology and pharmaceutical companies generally is highly uncertain, involves complex legal and factual questions, and has in recent years been the subject of much litigation. The degree of patent protection we require to successfully compete in the marketplace may be unavailable or severely limited in some cases and may not adequately protect our rights or permit us to gain or keep any competitive advantage. We cannot provide any assurances that any of our own or licensed patent applications will mature into issued patents, and cannot provide any assurances that any such patents, if issued, will include claims with a scope sufficient to protect our current and future product candidates or otherwise provide any competitive advantage. Additionally, patents can be enforced only in those jurisdictions in which the patent has issued. Furthermore, patents have a limited lifespan. In the United States, the natural expiration of a patent is generally twenty years after its first nonprovisional U.S. filing. The natural expiration of a patent outside of the United States varies in accordance with provisions of applicable local law, but is generally 20 years from the earliest local filing date. Various extensions may be available; however, the life of a patent, and the protection it affords, is limited. Given the amount of time required for the development, testing and regulatory review of new product candidates, patents protecting such candidates might expire before or shortly after such candidates are commercialized.

Moreover, our exclusive licenses may be subject to field restrictions and retained rights, which may adversely impact our competitive position. See “Business—License agreement.” Our licensed patent portfolio may not provide us with adequate and continuing patent protection sufficient to exclude others from commercializing products similar to our product candidates, including generic versions of such products. In addition, the patent

portfolio licensed to us is, or may be, licensed to third parties outside our licensed field, and such third parties may have certain enforcement rights. Thus, patents licensed to us could be put at risk of being invalidated or interpreted narrowly in litigation filed by or against another licensee or in administrative proceedings brought by or against another licensee in response to such litigation or for other reasons.

Other parties have developed technologies that may be related or competitive to our own and such parties may have filed or may file patent applications, or may have received or may receive patents, claiming inventions that may overlap or conflict with those claimed in our own patent applications or issued patents. Publications of discoveries in the scientific literature often lag behind the actual discoveries, and patent applications in the United States and in other jurisdictions are typically not published until 18 months after filing, or in some cases not at all. Therefore, we cannot know with certainty whether the inventors of our patents and applications were the first to make the inventions claimed in those patents or pending patent applications, or that they were the first to file for patent protection of such inventions. Further, we cannot assure you that all of the potentially relevant prior art relating to our patents and patent applications has been found. If such prior art exists, it can invalidate a patent or prevent a patent from issuing from a pending patent application. As a result, the issuance, scope, validity and commercial value of our patent rights cannot be predicted with any certainty. Further, if the breadth or strength of protection provided by our patents and patent applications is threatened, regardless of the outcome, it could dissuade companies from collaborating with us to license, develop or commercialize current or future product candidates.

In addition, the patent prosecution process is expensive and time-consuming, and we or our licensors may not be able to file and prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. In addition, the scope of the claims initially submitted for examination may be significantly narrowed by the time they issue, if at all. It is also possible that we or our licensors will fail to identify patentable aspects of our research and development output before it is too late to obtain patent protection. We cannot provide any assurances that we will be able to pursue or obtain additional patent protection based on our research and development efforts, or that any such patents or other intellectual property we generate will provide any competitive advantage. Moreover, we do not have the right to control the preparation, filing and prosecution of patent applications, or to control the maintenance of the patents, covering technology that we license from third parties. Therefore, these patents and applications may not be filed, prosecuted or maintained in a manner consistent with the best interests of our business.

Even if we acquire patent protection that we expect should enable us to maintain competitive advantage, the issuance of a patent is not conclusive as to its inventorship, scope, validity or enforceability. Third parties, including competitors, may challenge the inventorship, scope, validity, or enforceability thereof, which may result in such patents being narrowed, invalidated or held unenforceable. If issued, our patents may be challenged in patent offices in the United States and abroad, or in court. For example, we may be subject to a third-party submission of prior art to the U.S. Patent and Trademark Office, or USPTO, challenging the validity of one or more claims of our patents, once issued. Such submissions may also be made prior to a patent's issuance, precluding the granting of a patent based on one of our patent applications. We may become involved in opposition, reexamination, inter partes review, post-grant review, derivation, interference, or similar proceedings in the United States or abroad challenging the claims of our patents, once issued. Furthermore, patents may be challenged in court, once issued. Competitors may claim that they invented the inventions claimed in such patents or patent applications prior to the inventors of our patents, or may have filed patent applications before the inventors of our patents did. A competitor may also claim that we are infringing its patents and that we therefore cannot practice our technology as claimed under our patent applications and patents, if issued. As a result, one or more claims of our patents may be narrowed or invalidated. In litigation, a competitor could claim that our patents, if issued, are not valid for a number of reasons. If a court agrees, we would lose our rights to those challenged patents.

Even if they are unchallenged, our patents and pending patent applications, if issued, may not provide us with any meaningful protection or prevent competitors from designing around our patent claims to circumvent our patents by developing similar or alternative technologies or therapeutics in a non-infringing manner. For example, even if we have a valid and enforceable patent, we may not be able to exclude others from practicing our invention if the other party can show that they used the invention in commerce before our filing date or the other party benefits from a compulsory license. If the patent protection provided by the patents and patent applications we hold or pursue with respect to our product candidates is not sufficiently broad to impede such competition, our ability to successfully commercialize our product candidates could be negatively affected, which would harm our business.

Certain regulatory exclusivities may be available, however, the scope of such regulatory exclusivities is subject to change, and may not provide us with adequate and continuing protection sufficient to exclude others from commercializing products similar to our product candidates.

***If the scope of any patent protection we obtain is not sufficiently broad, or if we lose any of our patent protection, our ability to prevent our competitors from commercializing similar or identical product candidates would be adversely affected.***

The patent position of biopharmaceutical companies generally is highly uncertain, involves complex legal and factual questions, and has been the subject of much litigation in recent years. As a result, the issuance, scope, validity, enforceability and commercial value of our patent rights are highly uncertain. Our pending and future patent applications and those of our licensors may not result in patents being issued which protect our product candidates or which effectively prevent others from commercializing competitive product candidates.

Moreover, the coverage claimed in a patent application can be significantly reduced before the patent is issued, and its scope can be reinterpreted after issuance. Even if patent applications we own or in-license in the future issue as patents, they may not issue in a form that will provide us with any meaningful protection, prevent competitors or other third parties from competing with us, or otherwise provide us with any competitive advantage. Any patents that we own or in-license may be challenged or circumvented by third parties or may be narrowed or invalidated as a result of challenges by third parties. Consequently, we do not know whether our product candidates will be protectable or remain protected by valid and enforceable patents. Our competitors or other third parties may be able to circumvent our patents or the patents of our licensors by developing similar or alternative technologies or products in a non-infringing manner which could materially adversely affect our business, financial condition, results of operations and prospects.

The issuance of a patent is not conclusive as to its inventorship, scope, validity or enforceability, and our patents or the patents of our licensors may be challenged in the courts or patent offices in the United States and abroad. We may be subject to a third-party pre-issuance submission of prior art to the USPTO, or become involved in opposition, derivation, revocation, reexamination, post-grant review, and *inter partes* review, or other similar proceedings challenging our owned patent rights. An adverse determination in any such submission, proceeding or litigation could reduce the scope of, or invalidate or render unenforceable, our patent rights, allow third parties to commercialize our product candidates and compete directly with us, without payment to us, or result in our inability to manufacture or commercialize products without infringing third-party patent rights. Moreover, our patents or the patents of our licensors may become subject to post-grant challenge proceedings, such as oppositions in a foreign patent office, that challenge our priority of invention or other features of patentability with respect to our patents and patent applications and those of our licensors. Such challenges may result in loss of patent rights, loss of exclusivity or in patent claims being narrowed, invalidated or held unenforceable, which could limit our ability to stop others from using or commercializing similar or identical technology and products, or limit the duration of the patent protection of our product candidates. Such proceedings also may result in substantial cost and require significant time from

our scientists and management, even if the eventual outcome is favorable to us. In addition, if the breadth or strength of protection provided by our patents and patent applications or the patents and patent applications of our licensors is threatened, regardless of the outcome, it could dissuade companies from collaborating with us to license, develop or commercialize current or future product candidates.

Furthermore, the issuance of a patent does not give us the right to practice the patented invention. Third parties may have blocking patents that could prevent us from marketing our own patented product and practicing our own patented technology.

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

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

- others may be able to develop products that are similar to our product candidates but that are not covered by the claims of the patents that we own or license;
- we or our licensors or collaborators might not have been the first to make the inventions covered by the issued patents or patent application that we own or license;
- we or our licensors or collaborators might not have been the first to file patent applications covering certain of our inventions;
- others may independently develop similar or alternative technologies or duplicate any of our technologies without infringing our intellectual property rights;
- it is possible that the pending patent applications we own or license will not lead to issued patents;
- issued patents that we own or license may be held invalid or unenforceable, as a result of legal challenges by our competitors;
- our competitors might conduct research and development activities in countries where we do not have patent rights and then use the information learned from such activities to develop competitive products for sale in our major commercial markets;
- we may not develop additional proprietary technologies that are patentable;
- the patents of others may have an adverse effect on our business;
- we may fail to adequately protect and police our trademarks and trade secrets; and
- we may choose not to file a patent in order to maintain certain trade secrets or know-how, and a third party may subsequently file a patent covering such intellectual property.

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

***Our commercial success depends significantly on our ability to operate without infringing the patents and other proprietary rights of third parties. Claims by third parties that we infringe their proprietary rights may result in liability for damages or prevent or delay our developmental and commercialization efforts.***

Our commercial success depends in part on avoiding infringement of the patents and proprietary rights of third parties. However, our research, development and commercialization activities may be subject to claims that we infringe or otherwise violate patents or other intellectual property rights owned or controlled by third parties. Other entities may have or obtain patents or proprietary rights that could limit our ability to make, use, sell,

offer for sale or import our product candidates and products that may be approved in the future, or impair our competitive position. There is a substantial amount of litigation, both within and outside the United States, involving patent and other intellectual property rights in the biopharmaceutical industry, including patent infringement lawsuits, oppositions, reexaminations, IPR proceedings and PGR proceedings before the USPTO and/or corresponding foreign patent offices. Numerous third-party U.S. and foreign issued patents and pending patent applications exist in the fields in which we are developing product candidates. There may be third-party patents or patent applications with claims to materials, formulations, methods of manufacture or methods for treatment related to the use or manufacture of our product candidates.

There may also be patent applications that, if issued as patents, could be asserted against us. Patent applications in the United States and elsewhere are typically published approximately 18 months after the earliest filing for which priority is claimed, with such earliest filing date being commonly referred to as the priority date. Certain U.S. patent applications that will not be filed outside the United States can remain confidential until patents issue. Therefore, patent applications covering our product candidates could have been filed by third parties without our knowledge. Additionally, pending patent applications that have been published can, subject to certain limitations, be later amended in a manner that could cover our product candidates and their uses or manufacturing processes. The scope of a patent claim is determined by an interpretation of the law, the written disclosure in a patent and the patent's prosecution history and can involve other factors such as expert opinion. Our interpretation of the relevance or the scope of claims in a patent or a pending application may be incorrect, which may negatively impact our ability to market our product candidates. Further, we may incorrectly determine that our product candidates and their uses and manufacturing processes are not covered by a third-party patent or may incorrectly predict whether a third party's pending patent application will issue with claims of relevant scope. Our determination of the expiration date of any patent in the United States or abroad that we consider relevant may be incorrect, which may negatively impact our ability to develop and market our product candidates. Third-party intellectual property right holders may also actively bring infringement or other intellectual property-related claims against us, even if we have received patent protection for our product candidates and the relevant uses and processes.

As the biopharmaceutical industry expands and more patents are issued, the risk increases that our product candidates may be subject to claims of infringement of the patent rights of third parties. Because patent applications are maintained as confidential for a certain period of time, until the relevant application is published, we may be unaware of third-party patents that may be infringed by commercialization of any of our product candidates, and we cannot be certain that we were the first to file a patent application related to a product candidate or technology. Moreover, because patent applications can take many years to issue, there may be currently-pending patent applications that may later result in issued patents that our product candidates may infringe. In addition, identification of third-party patent rights that may be relevant to our technology is difficult because patent searching is imperfect due to differences in terminology among patents, incomplete databases and the difficulty in assessing the meaning of patent claims. There is also no assurance that there is not prior art of which we are aware, but which we do not believe is relevant to our business, which may, nonetheless, ultimately be found to limit our ability to make, use, sell, offer for sale or import our products that may be approved in the future, or impair our competitive position. In addition, third parties may obtain patents in the future and claim that use of our technologies infringes upon these patents. Any claims of patent infringement asserted by third parties would be time consuming and could:

- result in costly litigation that may cause negative publicity;
- divert the time and attention of our technical personnel and management;
- cause development delays;

- prevent us from commercializing any of our product candidates until the asserted patent expires or is held finally invalid or not infringed in a court of law;
- require us to develop non-infringing technology, which may not be possible on a cost-effective basis;
- subject us to significant liability to third parties; or
- require us to enter into royalty or licensing agreements, which may not be available on commercially reasonable terms, or at all, or which might be non-exclusive, which could result in our competitors gaining access to the same technology.

Although no third party has asserted a claim of patent infringement against us as of the date of this prospectus, others may hold proprietary rights that could prevent our product candidates from being marketed. It is possible that a third party may assert a claim of patent infringement directed at any of our product candidates. Any patent-related legal action against us claiming damages and seeking to enjoin commercial activities relating to our product candidates, treatment indications, or processes could subject us to significant liability for damages, including treble damages if we were determined to willfully infringe, and require us to obtain a license to manufacture or market our product candidates. Defense of these claims, regardless of their merit, would involve substantial litigation expense and would be a substantial diversion of employee resources from our business. We cannot predict whether we would prevail in any such actions or that any license required under any of these patents would be made available on commercially acceptable terms, if at all. Moreover, even if we or our current and/or future strategic partners were able to obtain a license, the rights may be nonexclusive, which could result in our competitors gaining access to the same intellectual property. In addition, we cannot be certain that we could redesign our product candidates, treatment indications, or processes to avoid infringement, if necessary. Accordingly, an adverse determination in a judicial or administrative proceeding, or the failure to obtain necessary licenses, could prevent us from developing and commercializing our product candidates, which could harm our business, financial condition and operating results. In addition, intellectual property litigation, regardless of its outcome, may cause negative publicity and could prohibit us from marketing or otherwise commercializing our product candidates and technology.

Parties making claims against us may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation or administrative proceedings, there is a risk that some of our confidential information could be compromised by disclosure. In addition, any uncertainties resulting from the initiation and continuation of any litigation could have a material adverse effect on our ability to raise additional funds or otherwise have a material adverse effect on our business, results of operations, financial condition and prospects.

***Some of our current product candidates and research programs are licensed from third parties. If these license agreements are terminated or interpreted to narrow our rights, our ability to advance our current product candidates or develop new product candidates based on these technologies will be materially adversely affected.***

We now depend on, at least in part, Viracta Therapeutics, Inc., Takeda Pharmaceutical Company Limited, Dana Farber Cancer Institute, Millennium Pharmaceuticals, Inc. and Merck KGaA, Darmstadt, Germany, and will continue to depend on Viracta Therapeutics, Inc., Takeda Pharmaceutical Company Limited, Dana Farber Cancer Institute, Millennium Pharmaceuticals, Inc. and Merck KGaA, Darmstadt, Germany and on licenses and sublicenses from other third parties, as well as potentially on other strategic relationships with third parties, for the research, development, manufacturing and commercialization of our current product candidates. If any of our licenses or relationships or any in-licenses on which our licenses are based are terminated or breached, we may:

- lose our rights to develop and market our current product candidates;

- lose patent or trade secret protection for our current product candidates;
- experience significant delays in the development or commercialization of our current product candidates;
- not be able to obtain any other licenses on acceptable terms, if at all; or
- incur liability for damages.

Additionally, even if not terminated or breached, our intellectual property licenses or sublicenses may be subject to disagreements over contract interpretation which could narrow the scope of our rights to the relevant intellectual property or technology or increase our financial or other obligations.

If we experience any of the foregoing, it could have a materially adverse effect on our business and could force us to cease operations which could cause you to lose all of your investment.

***If we breach our license agreements it could have a material adverse effect on our commercialization efforts for our product candidates.***

If we breach any of the agreements under which we license the use, development and commercialization rights to our product candidates or technology from third parties, we could lose license rights that are important to our business. Or if we fail to comply with our obligations in the agreements under which we license intellectual property rights from third parties or otherwise experience disruptions to our business relationships with our licensors, we could lose license rights that are important to our business.

Our current lead product candidates are protected by, among other intellectual property rights, patents and patent applications we co-own and exclusively in-licensed from Sunesis Pharmaceuticals, Inc. (now Viracta Therapeutics, Inc.). Our current lead product candidates and pipeline and our anticipated near term pipeline may include technologies, licensed from, for example Merck KGaA, Darmstadt, Germany.

Under the license agreements, we are subject to various obligations, including diligence obligations such as development and commercialization obligations, as well as potential royalty payments and other obligations. If we fail to comply with any of these obligations or otherwise breach our license agreements, our licensors may have the right to terminate the applicable license in whole or in part. Generally, the loss of any one of our current licenses, or any other license we may acquire in the future, could harm our business, prospects, financial condition and results of operations.

Licensing of intellectual property is of critical importance to our business and involves complex legal, business and scientific issues. Disputes may arise between us and our licensors regarding intellectual property subject to a license agreement, including:

- the scope of rights granted under the license agreement and other interpretation-related issues;
- whether and the extent to which our technology and processes infringe on intellectual property of the licensor that is not subject to the licensing agreement;
- our right to sublicense patent and other intellectual property rights to third parties under collaborative development relationships;
- our diligence obligations with respect to the use of the licensed technology in relation to our development and commercialization of our product candidates, and what activities satisfy those diligence obligations;
- the priority of invention of patented technology;

- the ownership of inventions and know-how resulting from the joint creation or use of intellectual property by our licensors and us and our partners; and
- whether and the extent to which inventors are able to contest the assignment of their rights to our licensors.

If disputes over intellectual property that we have licensed prevent or impair our ability to maintain our current licensing arrangements on acceptable terms or at all, we may be unable to successfully develop and commercialize the affected product candidates. In addition, if disputes arise as to ownership of licensed intellectual property, our ability to pursue or enforce the licensed patent rights may be jeopardized. If we or our licensors fail to adequately protect this intellectual property, our ability to commercialize our products could suffer.

In addition, the agreements under which we license intellectual property or technology from third parties, including our licenses with Viracta Therapeutics, Inc., Takeda Pharmaceutical Company Limited, Dana Farber Cancer Institute, Millennium Pharmaceuticals, Inc. and Merck KGaA, Darmstadt, Germany, are complex, and certain provisions in such agreements may be susceptible to multiple interpretations. The resolution of any contract interpretation disagreement that may arise could narrow what we believe to be the scope of our rights to the relevant intellectual property or technology, or increase what we believe to be our financial or other obligations under the relevant agreement, either of which could have a material adverse effect on our business, financial condition, results of operations, and prospects. Moreover, if disputes over intellectual property that we license prevent or impair our ability to maintain our licensing arrangements on commercially acceptable terms, we may be unable to successfully develop and commercialize the affected product candidates, which could have a material adverse effect on our business, financial conditions, results of operations, and prospects.

In spite of our best efforts, our licensors might conclude that we materially breached our license agreements and might therefore terminate the license agreements, thereby removing our ability to develop and commercialize products and technology covered by these license agreements. If these in-licenses are terminated, or if the underlying patents fail to provide the intended exclusivity, competitors would have the freedom to seek regulatory approval of, and to market, products identical to ours. This could have a material adverse effect on our competitive position, business, financial conditions, results of operations, and prospects.

While we cannot currently determine the amount of the royalty obligations we would be required to pay on sales of future products, if any, the amounts may be significant. The amount of our future royalty obligations will depend on the technology and intellectual property we use in products that we successfully develop and commercialize, if any. Therefore, even if we successfully develop and commercialize products, we may be unable to achieve or maintain profitability.

***In the future, we may need to obtain additional licenses of third-party technology that may not be available to us or are available only on commercially unreasonable terms, and which may cause us to operate our business in a more costly or otherwise adverse manner that was not anticipated.***

We seek to expand our product candidate pipeline in part by in-licensing the rights to key technologies. The future growth of our business will depend in part on our ability to in-license or otherwise acquire the rights to additional product candidates or technologies. We cannot assure you that we will be able to in-license or acquire the rights to any product candidates or technologies from third parties on acceptable terms or at all.

Other companies and academic institutions may also have filed or are planning to file patent applications potentially relevant to our business. From time to time, in order to avoid infringing these third-party patents, we may be required to license technology from third parties to further develop or commercialize our existing or future product candidates. Should we be required to obtain licenses to any third-party technology, including

any such patents required to manufacture, use or sell our existing or future product candidates, such licenses may not be available to us on commercially reasonable terms, or at all. The inability to obtain any third-party license required to develop or commercialize any of our existing or future product candidates could cause us to abandon any related efforts, which could seriously harm our business and operations.

The in-licensing and acquisition of these technologies is a competitive area, and a number of more established companies are also pursuing strategies to license or acquire product candidates or technologies that we may consider attractive. These established companies may have a competitive advantage over us due to their size, cash resources and greater clinical development and commercialization capabilities. In addition, companies that perceive us to be a competitor may be unwilling to license rights to us. Furthermore, we may be unable to identify suitable product candidates or technologies within our area of focus. If we are unable to successfully obtain rights to suitable product candidates or technologies, our business, financial condition and prospects could suffer.

***We may be involved in lawsuits to protect or enforce our own patents or our licensors' patents, which could be expensive, time consuming and unsuccessful. Further, our own issued patents or our licensors' patents could be found invalid or unenforceable if challenged in court.***

Competitors may infringe our intellectual property rights. To prevent infringement or unauthorized use, we may be required to file infringement claims, which can be expensive and time-consuming. In addition, in a patent infringement proceeding, a court may decide that a patent we own or in-license is not valid, is unenforceable and/or is not infringed. If we or any of our collaborators were to initiate legal proceedings against a third party to enforce a patent directed at one of our product candidates, the defendant could counterclaim that our patent or the patent of our licensors is invalid and/or unenforceable in whole or in part. In patent litigation in the United States, defendant counterclaims alleging invalidity and/or unenforceability are commonplace. Grounds for a validity challenge include an alleged failure to meet any of several statutory requirements, including lack of novelty, obviousness, lack of sufficient written description, non-enablement, or obviousness-type double patenting. Grounds for an unenforceability assertion could include an allegation that someone connected with prosecution of the patent withheld relevant information from the USPTO or made a misleading statement during prosecution.

Third parties may also raise similar invalidity claims before the USPTO or patent offices abroad, even outside the context of litigation. Such mechanisms include re-examination, PGR, IPR, derivation proceedings, and equivalent proceedings in foreign jurisdictions (e.g., opposition proceedings). The outcome following legal assertions of invalidity and/or unenforceability is unpredictable. With respect to the validity question, for example, we cannot be certain that there is no invalidating prior art, of which we, our licensors, and the patent examiners are unaware during prosecution. There is also no assurance that there is not prior art of which we are aware, but which we do not believe affects the validity or enforceability of a claim in our patents and patent applications or the patents and patent applications of our licensors, which may, nonetheless, ultimately be found to affect the validity or enforceability of a claim. If a third party were to prevail on a legal assertion of invalidity or unenforceability, we would lose at least part, and perhaps all, of the patent protection on our technology, or any product candidates that we may develop. Such a loss of patent protection would have a material adverse impact on our business, financial condition, results of operations and prospects.

In addition, if the breadth or strength of protection provided by our patents and patent applications or the patents and patent applications of our licensors is threatened, it could dissuade companies from collaborating with us to license, develop or commercialize current or future product candidates.

Even if resolved in our favor, litigation or other legal proceedings relating to our intellectual property rights may cause us to incur significant expenses, and could distract our technical and management personnel from

their normal responsibilities. Such litigation or proceedings could substantially increase our operating costs and reduce the resources available for development activities or any future sales, marketing or distribution activities. We may not have sufficient financial or other resources to conduct such litigation or proceedings adequately. Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their greater financial resources. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could compromise our ability to compete in the marketplace.

Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation or other legal proceedings relating to our intellectual property rights, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation or other proceedings.

***Intellectual property litigation may lead to unfavorable publicity that harms our reputation and causes the market price of our common shares to decline.***

During the course of any intellectual property litigation, there could be public announcements of the initiation of the litigation as well as results of hearings, rulings on motions, and other interim proceedings or developments in the litigation. If securities analysts or investors regard these announcements as negative, the perceived value of our existing product candidates, approved products, programs or intellectual property could be diminished. Accordingly, the market price of shares of our common stock may decline. Such announcements could also harm our reputation or the market for our product candidates, which could have a material adverse effect on our business.

***Derivation proceedings may be necessary to determine priority of inventions, and an unfavorable outcome may require us to cease using the related technology or to attempt to license rights from the prevailing party.***

Derivation proceedings provoked by third parties or brought by us or declared by the USPTO may be necessary to determine the priority of inventions with respect to our patents or patent applications or those of our licensors. An unfavorable outcome could require us to cease using the related technology or to attempt to license rights to it from the prevailing party. Our business could be harmed if the prevailing party does not offer us a license on commercially reasonable terms. Our defense of derivation proceedings may fail and, even if successful, may result in substantial costs and distract our management and other employees. In addition, the uncertainties associated with such proceedings could have a material adverse effect on our ability to raise the funds necessary to continue our clinical trials, continue our development programs, license necessary technology from third parties or enter into development or manufacturing partnerships that would help us bring our product candidates to market.

***Because of the expense and uncertainty of litigation, we may not be in a position to enforce our intellectual property rights against third parties.***

Because of the expense and uncertainty of litigation, we may conclude that even if a third-party is infringing our issued patent, any patents that may be issued as a result of our pending or future patent applications or other intellectual property rights, the risk-adjusted cost of bringing and enforcing such a claim or action may be too high or not in the best interest of our company or our stockholders, or it may be otherwise impractical or undesirable to enforce our intellectual property against some third parties. Our competitors or other third parties may be able to sustain the costs of complex patent litigation or proceedings more effectively than we can because of their greater financial resources and more mature and developed intellectual property portfolios. In such cases, we may decide that the more prudent course of action is to simply monitor the situation or initiate or seek some other non-litigious action or solution. In addition, the uncertainties associated

with litigation could compromise our ability to raise the funds necessary to continue our product development, in-license needed technology, or enter into development partnerships that would help us bring our product candidates to market.

***Recent patent reform legislation could increase the uncertainties and costs surrounding the prosecution of our patent applications and/or those of our licensors and the enforcement or defense of our issued patents and/or those of our licensors.***

On September 16, 2011, the Leahy-Smith America Invents Act, or the Leahy-Smith Act, was signed into law. The Leahy-Smith Act includes a number of significant changes to U.S. patent law. These include provisions that affect the way patent applications will be prosecuted and may also affect patent litigation. In particular, under the Leahy-Smith Act, the United States transitioned in March 2013 to a "first inventor to file" system in which, assuming that other requirements of patentability are met, the first inventor to file a patent application will be entitled to the patent regardless of whether a third party was first to invent the claimed invention. A third party that files a patent application in the USPTO after March 2013 but before us could therefore be awarded a patent covering an invention of ours even if we had made the invention before it was made by such third party. This will require us to be cognizant going forward of the time from invention to filing of a patent application. Furthermore, our ability to obtain and maintain valid and enforceable patents depends on whether the differences between our technology and the prior art allow our technology to be patentable over the prior art. Since patent applications in the United States and most other countries are confidential for a period of time after filing or until issuance, we may not be certain that we or our licensors are the first to either (1) file any patent application related to our product candidates or (2) invent any of the inventions claimed in the patents or patent applications.

The Leahy-Smith Act also includes a number of significant changes that affect the way patent applications will be prosecuted and also may affect patent litigation. These include allowing third-party submission of prior art to the USPTO during patent prosecution and additional procedures to attack the validity of a patent by USPTO administered post-grant proceedings, including PGR, IPR, and derivation proceedings. An adverse determination in any such submission or proceeding could reduce the scope or enforceability of, or invalidate, our patent rights, which could adversely affect our competitive position.

Because of a lower evidentiary standard in USPTO proceedings compared to the evidentiary standard in United States federal courts necessary to invalidate a patent claim, a third party could potentially provide evidence in a USPTO proceeding sufficient for the USPTO to hold a claim invalid even though the same evidence would be insufficient to invalidate the claim if first presented in a district court action. Accordingly, a third party may attempt to use the USPTO procedures to invalidate our patent claims that would not have been invalidated if first challenged by the third party as a defendant in a district court action. Thus, the Leahy-Smith Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and/or those of our licensors and the enforcement or defense of our issued patents or those of our licensors, all of which could have a material adverse effect on our business, financial condition, results of operations and prospects.

***Changes in U.S. patent law, or laws in other countries, could diminish the value of patents in general, thereby impairing our ability to protect our product candidates.***

As is the case with other pharmaceutical companies, our success is heavily dependent on intellectual property, particularly patents. Obtaining and enforcing patents in the biopharmaceutical industry involve a high degree of technological and legal complexity. Therefore, obtaining and enforcing biopharmaceutical patents is costly, time consuming and inherently uncertain. Changes in either the patent laws or in the interpretations of patent

laws in the United States and other countries may diminish the value of our intellectual property and may increase the uncertainties and costs surrounding the prosecution of patent applications and the enforcement or defense of issued patents. We cannot predict the breadth of claims that may be allowed or enforced in our patents or in third-party patents. In addition, Congress or other foreign legislative bodies may pass patent reform legislation that is unfavorable to us.

For example, the U.S. Supreme Court has ruled on several patent cases in recent years, either narrowing the scope of patent protection available in certain circumstances or weakening the rights of patent owners in certain situations. In addition to increasing uncertainty with regard to our ability to obtain patents in the future, this combination of events has created uncertainty with respect to the value of patents, once obtained. Depending on decisions by the U.S. Congress, the U.S. federal courts, the USPTO, or similar authorities in foreign jurisdictions, the laws and regulations governing patents could change in unpredictable ways that would weaken our ability to obtain new patents or to enforce our existing patent and the patents we might obtain or license in the future.

***We may be subject to claims challenging the inventorship or ownership of our patents and other intellectual property.***

We and/or our licensors may be subject to claims that former employees, collaborators or other third parties have an interest in our patents or other intellectual property as an inventor or co-inventor. In addition, we cannot assure you that all inventors have been or will be identified by us and/or by our collaborators despite diligent effort. The failure to name the proper inventors on a patent application can result in the patents issuing thereon being unenforceable. Inventorship disputes may arise from conflicting views regarding the contributions of different individuals named as inventors, the effects of foreign laws where foreign nationals are involved in the development of the subject matter of the patent, conflicting obligations of third parties involved in developing our product candidates or as a result of questions regarding co-ownership of potential joint inventions. Litigation may be necessary to resolve these and other claims challenging inventorship and/or ownership. Alternatively, or additionally, we may enter into agreements to clarify the scope of our rights in such intellectual property. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights, such as exclusive ownership of, or right to use, valuable intellectual property. Such an outcome could have a material adverse effect on our business. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management and other employees.

Our licensors may have relied on third-party consultants or collaborators such that our licensors are not the sole and exclusive owners of the patents we in-licensed. If other third parties have ownership rights or other rights to our in-licensed patents, they may be able to license such patents to our competitors, and our competitors could market competing products. This could have a material adverse effect on our competitive position, business, financial conditions, results of operations, and prospects.

In addition, while it is our policy to require our employees and contractors who may be involved in the conception or development of intellectual property to execute agreements assigning such intellectual property to us, we may be unsuccessful in executing such an agreement with each party who, in fact, conceives or develops intellectual property that we regard as our own. The assignment of intellectual property rights may not be self-executing, or the assignment agreements may be breached, and we may be forced to bring claims against third parties, or defend claims that they may bring against us, to determine the ownership of what we regard as our intellectual property. Such claims could have a material adverse effect on our business, financial condition, results of operations, and prospects.

***Patent terms may be inadequate to protect our competitive position on our product candidates for an adequate amount of time.***

Patents have a limited lifespan. In the United States, if all maintenance fees are timely paid, the natural expiration of a patent is generally 20 years from its earliest U.S. non-provisional filing date. Various extensions may be available, but the life of a patent, and the protection it affords, is limited. Even if patents covering our product candidates are obtained, once the patent life has expired, we may be open to competition from competitive products. Given the amount of time required for the development, testing and regulatory review of new product candidates, patents protecting such candidates might expire before or shortly after such candidates are commercialized. As a result, our patent portfolio may not provide us with sufficient rights to exclude others from commercializing products similar or identical to ours.

***If we do not obtain patent term extension for our product candidates, our business may be materially harmed.***

Depending upon the timing, duration and specifics of FDA marketing approval of our product candidates, one or more of our U.S. patents or those of our licensors may be eligible for limited patent term restoration under the Drug Price Competition and Patent Term Restoration Act of 1984, or the Hatch-Waxman Amendments. The Hatch-Waxman Amendments permit a patent restoration term of up to five years as compensation for patent term lost during product development and the FDA regulatory review process. A maximum of one patent may be extended per FDA approved product as compensation for the patent term lost during the FDA regulatory review process. A patent term extension cannot extend the remaining term of a patent beyond a total of 14 years from the date of product approval and only those claims covering such approved drug product, a method for using it or a method for manufacturing it may be extended. Patent term extension may also be available in certain foreign countries upon regulatory approval of our product candidates. However, we may not be granted an extension because of, for example, failing to apply within applicable deadlines, failing to apply prior to expiration of relevant patents or otherwise failing to satisfy applicable requirements. Moreover, the applicable time period or the scope of patent protection afforded could be less than we request. If we are unable to obtain patent term extension or restoration or the term of any such extension is less than we request, our competitors may obtain approval of competing products following our patent expiration, and our revenue could be reduced, possibly materially. Further, if this occurs, our competitors may take advantage of our investment in development and trials by referencing our clinical and preclinical data and launch their product earlier than might otherwise be the case.

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

Although we have pending patent applications in the United States and other countries, filing, prosecuting and defending patents in all countries throughout the world would be prohibitively expensive, and our intellectual property rights in some countries outside the United States can be less extensive than those in the United States. In addition, the laws of some foreign countries do not protect intellectual property rights to the same extent as federal and state laws in the United States. Consequently, we may not be able to prevent third parties from practicing our inventions in all countries outside the United States or from selling or importing products made using our inventions in and into the United States or other jurisdictions. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own products and, further, may export otherwise infringing products to territories where we have patent protection, but enforcement is not as strong as that in the United States. These products may compete with our product candidates, and our patents, the patents of our licensors, or other intellectual property rights may not be effective or sufficient to prevent them from competing.

Many companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. The legal systems of many foreign countries do not favor the enforcement of patents and other intellectual property protection, which could make it difficult for us to stop the infringement of our patents or our licensors' patents or marketing of competing products in violation of our proprietary rights. Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business, could put our patents or the patents of our licensors at risk of being invalidated or interpreted narrowly and our patent applications or the patent applications of our licensors at risk of not issuing and could provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate, and the damages or other remedies awarded, if any, may not be commercially meaningful. Accordingly, our efforts to enforce our intellectual property rights around the world may be inadequate to obtain a significant commercial advantage from the intellectual property that we develop or license.

Many countries have compulsory licensing laws under which a patent owner may be compelled to grant licenses to third parties. In addition, many countries limit the enforceability of patents against government agencies or government contractors. In these countries, the patent owner may have limited remedies, which could materially diminish the value of such patent. If we are forced to grant a license to third parties with respect to any patents relevant to our business, our competitive position may be impaired, and our business, financial condition, results of operations and prospects may be adversely affected.

***Obtaining and maintaining our patent protection depends on compliance with various procedural, documentary, fee payment and other requirements imposed by regulations and 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 the USPTO and various foreign patent offices at various points over the lifetime of our patents and/or applications and those of our licensors. We have systems in place to remind us to pay these fees, and we rely on our outside patent annuity service to pay these fees when due. Additionally, the USPTO and various foreign patent offices require compliance with a number of procedural, documentary, fee payment and other similar provisions during the patent application process. We employ reputable law firms and other professionals to help us comply, and in many cases, an inadvertent lapse can be cured by payment of a late fee or by other means in accordance with rules applicable to the particular jurisdiction. However, there are situations in which noncompliance can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. If such an event were to occur, it could have a material adverse effect on our business.

***If our trademarks and trade names are not adequately protected, then we may not be able to build name recognition in our markets of interest and our business may be adversely affected.***

We intend to use registered or unregistered trademarks or trade names to brand and market ourselves and our products. Our trademarks or trade names may be challenged, infringed, circumvented or declared generic or determined to be infringing on other marks. We may not be able to protect our rights to these trademarks and trade names, which we need to build name recognition among potential partners or customers in our markets of interest. At times, competitors may adopt trade names or trademarks similar to ours, thereby impeding our ability to build brand identity and possibly leading to market confusion. In addition, there could be potential trade name or trademark infringement claims brought by owners of other registered trademarks or trademarks that incorporate variations of our registered or unregistered trademarks or trade names. Over the long term, if we are unable to establish name recognition based on our trademarks and trade names, then we may not be able to compete effectively, and our business may be adversely affected. Our efforts to enforce or protect our

proprietary rights related to trademarks, trade secrets, domain names, copyrights or other intellectual property may be ineffective and could result in substantial costs and diversion of resources and could adversely affect our financial condition or results of operations.

***If we are unable to protect the confidentiality of our trade secrets, our business and competitive position would be harmed.***

In addition, we rely on the protection of our trade secrets, including unpatented know-how, technology and other proprietary information to maintain our competitive position. Although we have taken steps to protect our trade secrets and unpatented know-how, including entering into confidentiality agreements with third parties, and confidential information and inventions agreements with employees, consultants and advisors, we cannot provide any assurances that all such agreements have been duly executed, and any of these parties may breach the agreements and disclose our proprietary information, including our trade secrets, and we may not be able to obtain adequate remedies for such breaches. Enforcing a claim that a party illegally disclosed or misappropriated a trade secret is difficult, expensive and time-consuming, and the outcome is unpredictable. In addition, some courts inside and outside the United States are less willing or unwilling to protect trade secrets.

Moreover, third parties may still obtain this information or may come upon this or similar information independently, and we would have no right to prevent them from using that technology or information to compete with us. If any of these events occurs or if we otherwise lose protection for our trade secrets, the value of this information may be greatly reduced, and our competitive position would be harmed. If we do not apply for patent protection prior to such publication or if we cannot otherwise maintain the confidentiality of our proprietary technology and other confidential information, then our ability to obtain patent protection or to protect our trade secret information may be jeopardized.

***We may be subject to claims that we or our employees have wrongfully used or disclosed alleged confidential information or trade secrets.***

We have entered into or may enter in the future into non-disclosure and confidentiality agreements to protect the proprietary positions of third parties, such as outside scientific collaborators, CROs, third-party manufacturers, consultants, advisors, potential partners, and other third parties. We may become subject to litigation where a third party asserts that we or our employees inadvertently or otherwise breached the agreements and used or disclosed trade secrets or other information proprietary to the third parties. Defense of such matters, regardless of their merit, could involve substantial litigation expense and be a substantial diversion of employee resources from our business. We cannot predict whether we would prevail in any such actions. Moreover, intellectual property litigation, regardless of its outcome, may cause negative publicity and could prohibit us from marketing or otherwise commercializing our product candidates and technology. Failure to defend against any such claim could subject us to significant liability for monetary damages or prevent or delay our developmental and commercialization efforts, which could adversely affect our business. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to our management team and other employees.

Parties making claims against us may be able to sustain the costs of complex intellectual property litigation more effectively than we can because they have substantially greater resources. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure. In addition, any uncertainties resulting from the initiation and continuation of any litigation could have a material adverse effect on our ability to raise additional funds or otherwise have a material adverse effect on our business, operating results, financial condition and prospects.

***We may be subject to claims that we have wrongfully hired an employee from a competitor or that we or our employees have wrongfully used or disclosed alleged confidential information or trade secrets of their former employers.***

As is common in the biopharmaceutical industry, in addition to our employees, we engage the services of consultants to assist us in the development of our product candidates. Many of these consultants, and many of our employees, were previously employed at, or may have previously provided or may be currently providing consulting services to, other pharmaceutical companies including our competitors or potential competitors. We may become subject to claims that we, our employees or a consultant inadvertently or otherwise used or disclosed trade secrets or other information proprietary to their former employers or their former or current clients. Litigation may be necessary to defend against these claims. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel, which could adversely affect our business. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to our management team and other employees.

***The patent protection and patent prosecution for some of our product candidates may be dependent on third parties.***

While we normally seek to obtain the right to control prosecution, maintenance and enforcement of the patents relating to our product candidates, there may be times when the filing and prosecution activities for patents and patent applications relating to our product candidates are controlled by our licensors or collaboration partners. If any of our licensors or collaboration partners fail to prosecute, maintain and enforce such patents and patent applications in a manner consistent with the best interests of our business, including by payment of all applicable fees for patents covering our product candidates, we could lose our rights to the intellectual property or our exclusivity with respect to those rights, our ability to develop and commercialize those product candidates may be adversely affected and we may not be able to prevent competitors from making, using and selling competing products. In addition, even where we have the right to control patent prosecution of patents and patent applications we have licensed from third parties, we may still be adversely affected or prejudiced by actions or inactions of our licensors and their counsel that took place prior to the date upon which we assumed control over patent prosecution.

Currently, our intellectual property protection includes patents and patent applications that we have in-licensed from Sunesis Pharmaceuticals, Inc. (now Viracta Therapeutics, Inc.), Takeda Pharmaceutical Company Limited, and Merck KGaA, Darmstadt, Germany. Our exclusive and non-exclusive licenses may be subject to certain retained rights, which may adversely impact our competitive position. We do not control the prosecution and maintenance of several of the licensed patent portfolios; thus, we cannot assure you that the licensed patent families will be prepared, filed, prosecuted, or maintained in a manner consistent with the best interests of our business. See “Business—License Agreement.” Our licensed patent portfolio may not provide us with adequate and continuing patent protection sufficient to exclude others from commercializing products similar to our product candidates.

***Intellectual property discovered through government funded programs may be subject to federal regulations such as “march-in” rights, certain reporting requirements and a preference for U.S.-based companies. Compliance with such regulations may limit our exclusive rights and limit our ability to contract with non-U.S. manufacturers.***

Some of our own issued patents or pending patent applications may have been generated through the use of U.S. government funding, and we may acquire or license in the future intellectual property rights that have been generated through the use of U.S. government funding or grants. Pursuant to the Bayh-Dole Act of 1980,

the U.S. government has certain rights in inventions developed with government funding. These U.S. government rights include a non-exclusive, non-transferable, irrevocable worldwide license to use inventions for any governmental purpose. In addition, the U.S. government has the right, under certain limited circumstances, to require us to grant exclusive, partially exclusive, or non-exclusive licenses to any of these inventions to a third party if it determines that: (1) adequate steps have not been taken to commercialize the invention; (2) government action is necessary to meet public health or safety needs; or (3) government action is necessary to meet requirements for public use under federal regulations (also referred to as “march-in rights”). If the U.S. government exercised its march-in rights in our existing or future intellectual property rights that are generated through the use of U.S. government funding or grants, we could be forced to license or sublicense intellectual property developed by us or that we license on terms unfavorable to us, and there can be no assurance that we would receive compensation from the U.S. government for the exercise of such rights. The U.S. government also has the right to take title to these inventions if the grant recipient fails to disclose the invention to the government or fails to file an application to register the intellectual property within specified time limits. Intellectual property generated under a government funded program is also subject to certain reporting requirements, compliance with which may require us to expend substantial resources. In addition, the U.S. government requires that any products embodying any of these inventions or produced through the use of any of these inventions be manufactured substantially in the United States. This preference for U.S. industry may be waived by the federal agency that provided the funding if the owner or assignee of the intellectual property can show that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible. This preference for U.S. industry may limit our ability to contract with non-U.S. product manufacturers for products covered by such intellectual property.

## Risks related to our common stock and this offering

***No public market for our common stock currently exists, and an active and liquid trading market for our common stock may never develop. As a result, you may not be able to resell your shares of common stock at or above the initial public offering price.***

Prior to this offering, no market for our common stock existed and an active trading market for our common stock may never develop or be sustained following this offering. The initial public offering price for our common stock will be determined through negotiations with the underwriters and the negotiated price may not be indicative of the market price of our common stock after this offering. The market value of our common stock may decrease from the initial public offering price. As a result of these and other factors, you may be unable to resell your shares of our common stock at or above the initial public offering price. The lack of an active market may impair your ability to sell your shares of common stock at the time you wish to sell them or at a price that you consider reasonable. The lack of an active market may also reduce the fair market value of your shares of common stock. Furthermore, an inactive market may also impair our ability to raise capital by selling shares of our common stock and may impair our ability to enter into strategic collaborations or acquire companies or products by using our shares of common stock as consideration.

***The market price of our common stock is likely to be highly volatile, which could result in substantial losses for purchasers of our common stock in this offering.***

The market price of our common stock following this offering is likely to be highly volatile and subject to wide fluctuations in response to various factors, some of which we cannot control. As a result of this volatility, you may not be able to sell your shares of common stock at or above the initial public offering price. The market

price for our common stock may be influenced by many factors, including the other risks described in this “Risk factors” section and the following:

- results of preclinical studies or clinical trials by us or those of our competitors or by existing or future collaborators or licensing partners;
- the timing and enrollment status of our clinical trials;
- changes in the development status of our product candidates, including variations in the level of expense related to the development of our programs or funding support by us or by existing or future collaborators or licensing partners;
- regulatory or legal developments in the United States and other countries, especially changes in laws or regulations applicable to our business;
- the success of competitive products or technologies;
- introductions and announcements of new product candidates by us, our future collaboration partners, or our competitors, and the timing of these introductions or announcements;
- actions taken by regulatory agencies with respect to our product candidates, clinical studies, manufacturing process or sales and marketing terms;
- our execution of any collaboration, licensing or similar arrangements, and the timing of payments we may make or receive under existing or future arrangements or the termination or modification of any such existing or future arrangements;
- actual or anticipated variations in our financial results or those of companies that are perceived to be similar to us;
- the success of our efforts to acquire or in-license additional technologies or product candidates;
- announced or completed significant acquisitions, strategic collaborations, joint ventures or capital commitments by us or our competitors;
- developments or disputes concerning our intellectual property and proprietary rights;
- the recruitment or departure of key personnel;
- changes in the structure of healthcare payment systems;
- actual or anticipated changes in earnings estimates or changes in stock market analyst recommendations regarding our common stock, other comparable companies or our industry generally;
- our failure or the failure of our competitors to meet analysts’ projections or guidance that we or our competitors may give to the market;
- speculation in the press or investment community;
- share price and fluctuations of trading volume of our common stock;
- fluctuations in the valuation of companies perceived by investors to be comparable to us;
- sales of shares of our common stock by us, insiders or our stockholders;
- our ability or inability to raise additional capital and the terms on which we raise it;

- the concentrated ownership of our common stock;
- changes in accounting principles;
- natural disasters, terrorist acts, acts of war and other calamities; and
- general economic, industry and market conditions, or other events or factors, many of which are beyond our control, such as the recent COVID-19 pandemic.

In addition, the stock market in general, and the markets for pharmaceutical, biopharmaceutical and biotechnology stocks in particular, have experienced extreme price and volume fluctuations, including as a result of the COVID-19 pandemic, that have been often unrelated or disproportionate to the operating performance of the issuer. Furthermore, the trading price of our common stock may be adversely affected by third parties trying to drive down the market price. Short sellers and others, some of whom post anonymously on social media, may be positioned to profit if our stock declines and their activities can negatively affect our stock price. These broad market and industry factors may seriously harm the market price of our common stock, regardless of our actual operating performance. The realization of any of the above risks or any of a broad range of other risks, including those described in this “Risk factors” section, could have a dramatic and adverse impact on the market price of our common stock.

In the past, securities class action litigation has often been brought against public companies following declines in the market price of their securities. This risk is especially relevant for biopharmaceutical companies, which have experienced significant stock price volatility in recent years. If we face such litigation, it could result in substantial costs and a diversion of management’s attention and our resources, which could harm our business.

***Our quarterly operating results may fluctuate significantly or may fall below the expectations of investors or securities analysts, each of which may cause our stock price to fluctuate or decline.***

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

- timing and variations in the level of expense related to the current or future development of our programs;
- timing and status of enrollment for our clinical trials;
- impacts from the COVID-19 pandemic on us or third parties with which we engage;
- results of clinical trials, or the addition or termination of clinical trials or funding support by us or potential future partners;
- our execution of any collaboration, licensing or similar arrangements, and the timing of payments we may make or receive under potential future arrangements or the termination or modification of any such potential future arrangements;
- any intellectual property infringement, misappropriation or violation lawsuit or opposition, interference or cancellation proceeding in which we may become involved;
- additions and departures of key personnel;
- strategic decisions by us or our competitors, such as acquisitions, divestitures, spin-offs, joint ventures, strategic investments or changes in business strategy;
- if any product candidate we may develop receive regulatory approval, the timing and terms of such approval and market acceptance and demand for such product candidates;

- the timing and cost to establish a sales, marketing and distribution infrastructure to commercialize any products for which we may obtain marketing approval and intend to commercialize on our own or jointly with future collaborators;
- regulatory developments affecting current or future product candidates or those of our competitors;
- the amount of expense or gain associated with the change in value of the success payments and contingent consideration; and
- changes in general market and economic conditions.

If our quarterly operating results fall below the expectations of investors or securities analysts, the price of our common stock could decline substantially. Furthermore, any quarterly fluctuations in our operating results may, in turn, cause the price of our stock to fluctuate substantially. We believe that quarterly comparisons of our financial results are not necessarily meaningful and should not be relied upon as an indication of our future performance.

***You will experience immediate and substantial dilution as a result of this offering and may experience additional dilution in the future.***

You will suffer immediate and substantial dilution with respect to the common stock you purchase in this offering. If you purchase common stock in this offering, assuming an initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, and assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and that the underwriters do not exercise their option to purchase additional common stock in this offering, you will incur immediate and substantial dilution of $ per share, representing the difference between the assumed initial public offering price of $ per share and our pro forma net tangible book value per share as of March 31, 2021 after giving effect to this offering and the conversion of all outstanding redeemable convertible preferred shares upon the completion of this offering. Following the completion of this offering, investors purchasing common stock in this offering will have contributed % of the total amount invested by stockholders since inception, but will only own % of the shares of common stock outstanding.

For a further description of the dilution you will experience immediately after this offering, see the section titled “Dilution.”

***We do not currently intend to pay dividends on our common stock and, consequently, our stockholders’ ability to achieve a return on their investment will depend on appreciation of the value of our common stock.***

We have never declared or paid cash dividends on our common stock. We currently intend to retain all available funds and any future earnings to support operations and to finance the growth and development of our business. We do not intend to declare or pay any cash dividends on our capital stock in the foreseeable future. As a result, any investment return on our common stock will depend upon increases in the value for our common stock, which is not certain.

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

Based on shares of our capital stock outstanding as of March 31, 2021, upon completion of this offering, we will have a total of shares of common stock outstanding. Of these shares, only shares of common stock sold in this offering, or shares if the underwriters exercise their option to

purchase additional shares in full, will be freely tradable, without restriction, in the public market immediately after this offering. Each of our officers, directors and substantially all of our stockholders have entered or will enter into lock-up agreements with the underwriters that restrict their ability to sell or transfer their shares. The lock-up agreements pertaining to this offering will expire 180 days from the date of this prospectus. However, J.P. Morgan Securities LLC may, in its sole discretion, permit our officers, directors and other stockholders who are subject to the lock-up agreements to sell shares prior to the expiration of the lock-up agreements. After the lock-up agreements expire, based on shares outstanding as of March 31, 2021, up to an additional shares of common stock will be eligible for sale in the public market, approximately of which shares are held by our officers, directors and their affiliated entities, and will be subject to volume limitations under Rule 144 under the Securities Act.

After this offering, the holders of an aggregate of shares of our outstanding common stock as of March 31, 2021 will have rights, subject to some conditions, to require us to file registration statements covering their shares or to include their shares in registration statements that we may file for ourselves or our stockholders. We also intend to register shares of common stock that we may issue under our equity incentive plans. Once we register these shares, they will be able to be sold freely in the public market upon issuance, subject to the 180-day lock-up period under the lock-up agreements described above and in the section titled “Underwriting.”

We cannot predict what effect, if any, sales of our shares in the public market or the availability of shares for sale will have on the market price of our common stock. However, future sales of substantial amounts of our common stock in the public market, including shares issued upon exercise of our outstanding options, or the perception that such sales may occur, could adversely affect the market price of our common stock.

We also expect that significant additional capital may be needed in the future to continue our planned operations. To raise capital, we may sell common stock, convertible securities or other equity securities in one or more transactions at prices and in a manner we determine from time to time. To the extent that additional capital is raised through the sale and issuance of shares or other securities convertible into shares, our stockholders will be diluted. These sales, or the perception in the market that the holders of a large number of shares intend to sell shares, could reduce the market price of our common stock.

***We will have broad discretion in the use of the net proceeds from this offering and may not use them effectively.***

Our management will have broad discretion in the application of the net proceeds from this offering, and you will be relying on the judgment of our management regarding the application of these proceeds. You will not have the opportunity, as part of your investment decision, to assess whether we are using the proceeds appropriately. Our management might not apply our net proceeds in ways that ultimately increase the value of your investment. If we do not invest or apply the net proceeds from this offering in ways that enhance stockholder value, we may fail to achieve expected financial results, which could cause our stock price to decline. Pending their use, we may invest the net proceeds from this offering in a manner that does not produce income or that loses value.

***Our principal stockholders and management own a significant percentage of our stock and will be able to exert significant control over matters subject to stockholder approval.***

Based on the beneficial ownership of our common stock as of April 15, 2021, prior to this offering, our executive officers, directors, holders of 5% or more of our capital stock and their respective affiliates beneficially owned 83% of our voting stock and, upon the completion of this offering, that same group will hold % of our

outstanding voting stock (assuming no exercise of the underwriters' option to purchase additional shares and no purchases of shares in this offering or the directed share program by any of this group). The voting power of this group may increase to the extent they convert shares of non-voting common stock they hold into common stock. As a result, these stockholders, if acting together, will continue to have significant influence over the outcome of corporate actions requiring stockholder approval, including the election of directors, amendment of our organizational documents, any merger, consolidation or sale of all or substantially all of our assets and any other significant corporate transaction. The interests of these stockholders may not be the same as or may even conflict with your interests. For example, these stockholders could delay or prevent a change of control of our company, even if such a change of control would benefit our other stockholders, which could deprive our stockholders of an opportunity to receive a premium for their common stock as part of a sale of our company or our assets and might affect the prevailing market price of our common stock.

***We are an "emerging growth company" and a "smaller reporting company" and we cannot be certain if the reduced reporting requirements applicable to emerging growth companies or smaller reporting companies will make our common stock less attractive to investors.***

We are an "emerging growth company" as defined in the JOBS Act. For as long as we continue to be an emerging growth company, we may take advantage of exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including (i) not being required to comply with the auditor attestation requirements of the Sarbanes-Oxley Act, (ii) reduced disclosure obligations regarding executive compensation in this prospectus and our periodic reports and proxy statements and (iii) exemptions from the requirements of holding nonbinding advisory stockholder votes on executive compensation and stockholder approval of any golden parachute payments not approved previously. In addition, as an emerging growth company, we are only required to provide two years of audited financial statements and two years of selected financial data in this prospectus.

We could be an emerging growth company for up to five fiscal years following the completion of this offering; *provided*, *however*, certain circumstances could cause us to lose that status earlier, including if we are deemed to be a "large accelerated filer," which occurs when the market value of our common stock that is held by non-affiliates equals or exceeds $700 million, if we have total annual gross revenue of $1.07 billion or more, or if we issue more than $1.0 billion in non-convertible debt during any three-year period before that time.

Even after we no longer qualify as an emerging growth company, we may still qualify as a "smaller reporting company," which would allow us to take advantage of many of the same exemptions from disclosure requirements, including not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act and reduced disclosure obligations regarding executive compensation in this prospectus and in our periodic reports and proxy statements. We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our share price may be more volatile.

Under the JOBS Act, emerging growth companies can also delay adopting new or revised accounting standards until such time as those standards apply to private companies. We have elected to take advantage of the benefits of this extended transition period. Our financial statements may therefore not be comparable to those of companies that comply with such new or revised accounting standards. Until the date that we are no longer an "emerging growth company" or affirmatively and irrevocably opt out of the exemption provided by Section 7(a)(2)(B) of the Securities Act, upon issuance of a new or revised accounting standard that applies to our consolidated financial statements and that has a different effective date for public and private companies, we will disclose the date on which adoption is required for non-emerging growth companies and the date on which we will adopt the recently issued accounting standard.

We are also a “smaller reporting company,” meaning that the market value of our stock held by non-affiliates plus the proposed aggregate amount of gross proceeds to us as a result of this offering is less than $700.0 million and our annual revenue is less than $100.0 million during the most recently completed fiscal year. We may continue to be a smaller reporting company after this offering if either (i) the market value of our stock held by non-affiliates is less than $250.0 million or (ii) our annual revenue is less than $100.0 million during the most recently completed fiscal year and the market value of our stock held by non-affiliates is less than $700.0 million. If we are a smaller reporting company at the time we cease to be an emerging growth company, we may continue to rely on the same exemptions from certain disclosure requirements, including not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation and the option to present only the two most recent fiscal years of audited financial statements in our Annual Report on Form 10-K. We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our share price may be more volatile.

***Anti-takeover provisions in our charter documents and under Delaware law could prevent or delay an acquisition of us, which may be beneficial to our stockholders, and may prevent attempts by our stockholders to replace or remove our current management.***

Our restated certificate of incorporation and our restated bylaws that will be in effect upon completion of this offering contain provisions that could delay or prevent a change in control of our company. These provisions could also make it difficult for stockholders to elect directors who are not nominated by current members of our board of directors or take other corporate actions, including effecting changes in our management. These provisions:

- establish a classified board of directors so that not all members of our board are elected at one time;
- permit only the board of directors to establish the number of directors and fill vacancies on the board;
- provide that directors may only be removed “for cause” and only with the approval of two-thirds of our stockholders;
- require super-majority voting to amend some provisions in our restated certificate of incorporation and restated bylaws;
- authorize the issuance of “blank check” preferred stock that our board could use to implement a stockholder rights plan;
- eliminate the ability of our stockholders to call special meetings of stockholders;
- prohibit stockholder action by written consent, which requires all stockholder actions to be taken at a meeting of our stockholders;
- prohibit cumulative voting; and
- establish advance notice requirements for nominations for election to our board or for proposing matters that can be acted upon by stockholders at annual stockholder meetings.

In addition, Section 203 of the Delaware General Corporation Law, or DGCL, may discourage, delay or prevent a change in control of our company. Section 203 imposes certain restrictions on mergers, business combinations and other transactions between us and holders of 15% or more of our common stock.

***The exclusive forum provision in our organizational documents may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or any of our directors, officers, or other employees, or the underwriters of any offering giving rise to such claim, which may discourage lawsuits with respect to such claims.***

Our restated certificate of incorporation that will be in effect upon completion of this offering, to the fullest extent permitted by law, will provide that the Court of Chancery of the State of Delaware is the exclusive forum for: any derivative action or proceeding brought on our behalf; any action asserting a breach of fiduciary duty; any action asserting a claim against us arising pursuant to the DGCL, our restated certificate of incorporation, or our restated bylaws; or any action asserting a claim against us that is governed by the internal affairs doctrine. This exclusive forum provision does not apply to suits brought to enforce a duty or liability created by the Securities Exchange Act of 1934, as amended, or the Exchange Act. It could apply, however, to a suit that falls within one or more of the categories enumerated in the exclusive forum provision.

This choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or any of our directors, officers, or other employees, or the underwriters of any offering giving rise to such claims, which may discourage lawsuits with respect to such claims. Alternatively, if a court were to find the choice of forum provisions contained in our restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, results of operations and financial condition.

Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all claims brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder. Our restated bylaws will provide that the federal district courts of the United States of America will, to the fullest extent permitted by law, be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act, or a Federal Forum Provision, including for all causes of action asserted against any defendant named in such complaint. For the avoidance of doubt, this provision is intended to benefit and may be enforced by us, our officers and directors, the underwriters to any offering giving rise to such complaint, and any other professional entity whose profession gives authority to a statement made by that person or entity and who has prepared or certified any part of the documents underlying the offering. Our decision to adopt a Federal Forum Provision followed a decision by the Supreme Court of the State of Delaware holding that such provisions are facially valid under Delaware law. While federal or state courts may not follow the holding of the Delaware Supreme Court or may determine that the Federal Forum Provision should be enforced in a particular case, application of the Federal Forum Provision means that suits brought by our stockholders to enforce any duty or liability created by the Securities Act must be brought in federal court and cannot be brought in state court, and our stockholders cannot waive compliance with the federal securities laws and the rules and regulations thereunder.

Section 27 of the Exchange Act creates exclusive federal jurisdiction over all claims brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. In addition, neither the exclusive forum provision nor the Federal Forum Provision applies to suits brought to enforce any duty or liability created by the Exchange Act. Accordingly, actions by our stockholders to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder must be brought in federal court, and our stockholders cannot waive compliance with the federal securities laws and the rules and regulations thereunder.

Any person or entity purchasing or otherwise acquiring or holding any interest in any of our securities shall be deemed to have notice of and consented to our exclusive forum provisions, including the Federal Forum Provision. These provisions may limit a stockholders' ability to bring a claim, and may result in increased costs for a stockholder to bring such a claim, in a judicial forum of their choosing for disputes with us or our

directors, officers, or other employees, or the underwriters of any offering giving rise to such claim, which may discourage lawsuits against us and our directors, officers, and other employees, and the underwriters of this offering.

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

We have never declared or paid cash dividends on our capital stock. We currently intend to retain all of our future earnings, if any, to finance the growth and development, operation and expansion of our business and do not anticipate declaring or paying any cash dividends for the foreseeable future. As a result, capital appreciation, if any, of our common stock will be your sole source of gain for the foreseeable future.

## General risk factors

***If securities or industry analysts do not publish research or reports about our business, or if they issue an adverse or misleading opinion regarding our company, our common stock price and trading volume could decline.***

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts publish about us or our business. We do not currently have and may never obtain research coverage by securities and industry analysts. If no or few securities or industry analysts commence coverage of us, the trading price for our common stock could be impacted negatively. In the event we obtain securities or industry analyst coverage, if any of the analysts who cover us issue an adverse or misleading opinion regarding us, our business model, our intellectual property or our stock performance, or if our preclinical studies and future clinical trials and operating results fail to meet the expectations of analysts, our stock price would likely decline. If one or more of such analysts cease coverage of us or fail to publish reports on us regularly, we could lose visibility in the financial markets, which in turn could cause a decline in our stock price or trading volume.

***We will incur increased costs as a result of operating as a public company, and our management will be required to devote substantial time to new compliance initiatives and corporate governance practices.***

As a public company, and particularly after we are no longer an emerging growth company, we will incur significant legal, accounting and other expenses that we did not incur as a private company. The Sarbanes- Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the listing requirements of Nasdaq and other applicable securities rules and regulations impose various requirements on public companies, including establishment and maintenance of effective disclosure and financial controls and corporate governance practices. Our management and other personnel will need to devote a substantial amount of time to these compliance initiatives. Moreover, we expect these rules and regulations to substantially increase our legal and financial compliance costs and to make some activities more time consuming and costly. For example, we expect that these rules and regulations may make it more difficult and more expensive for us to obtain director and officer liability insurance and we may be required to incur substantial costs to maintain sufficient coverage. We cannot predict or estimate the amount or timing of additional costs we may incur to respond to these requirements. The impact of these requirements could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors, our board committees or as executive officers. The increased costs may require us to reduce costs in other areas of our business or increase the prices of our products once commercialized. Moreover, these rules and regulations are often subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices.

***If we fail to maintain proper and effective internal controls over financial reporting our ability to produce accurate and timely financial statements could be impaired.***

Pursuant to Section 404 of the Sarbanes-Oxley Act, our management will be required to report upon the effectiveness of our internal control over financial reporting beginning with annual report for our fiscal year ending December 31, 2022. When we lose our status as an "emerging growth company" and become an "accelerated filer" or a "large accelerated filer," our independent registered public accounting firm will be required to attest to the effectiveness of our internal control over financial reporting. The rules governing the standards that must be met for management to assess our internal control over financial reporting are complex and require significant documentation, testing, and possible remediation. To achieve compliance with Section 404 within the prescribed period, we will be engaged in a process to document and evaluate our internal control over financial reporting, which is both costly and challenging. In this regard, we will need to continue to dedicate internal resources, potentially engage outside consultants and adopt a detailed work plan to assess and document the adequacy of internal control over financial reporting, continue steps to improve control processes as appropriate, validate through testing that controls are functioning as documented and implement a continuous reporting and improvement process for internal control over financial reporting. This process will be time-consuming, costly and complicated.

Any failure to maintain internal control over financial reporting could severely inhibit our ability to accurately report our financial condition, results of operations, or cash flows. If we are unable to conclude that our internal control over financial reporting is effective, or if our independent registered public accounting firm determines we have a material weakness or significant deficiency in our internal control over financial reporting, investors may lose confidence in the accuracy and completeness of our financial reports, the market price of our common stock could decline, and we could be subject to sanctions or investigations by the Nasdaq Global Market, or Nasdaq, the SEC, or other regulatory authorities. Failure to remedy any material weakness in our internal control over financial reporting, or to implement or maintain other effective control systems required of public companies, could also restrict our future access to the capital markets.

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

Upon the completion of this offering, we will become subject to the periodic reporting requirements of the Exchange Act. We designed our disclosure controls and procedures to reasonably assure that information we must disclose in reports we file or submit under the Exchange Act is accumulated and communicated to management, and 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.

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. For example, our directors or executive officers could inadvertently fail to disclose a new relationship or arrangement causing us to fail to make any related party transaction disclosures. 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 due to error or fraud may occur and not be detected. In addition, we do not have a formal risk management program for identifying and addressing risks to our business in other areas.

***We may be subject to securities litigation, which is expensive and could divert management attention.***

The market price of our common stock may be volatile. The stock market in general, and Nasdaq and biopharmaceutical companies in particular, have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of these companies. 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. Securities litigation against us could result in substantial costs and divert our management's attention from other business concerns, which could seriously harm our business.

# Conversion

We currently operate as a limited liability company organized under the laws of the State of Delaware named Day One Biopharmaceuticals Holding Company, LLC, or Day One LLC. We currently have two subsidiaries, both of which are incorporated under the laws of the state of Delaware: DOT Therapeutics-1, Inc. and DOT Therapeutics-2, Inc. Prior to the effectiveness of the registration statement of which this prospectus forms a part, we will engage in the following transactions, which we refer to collectively as the Conversion:

- we will convert from a Delaware limited liability company to a Delaware corporation by filing a certificate of conversion with the Secretary of State of the State of Delaware; and
- we will change our name to Day One Biopharmaceuticals, Inc.

As part of the Conversion:

- holders of Series A redeemable convertible preferred shares of Day One LLC will receive one share of Series A redeemable convertible preferred stock of Day One Biopharmaceuticals, Inc. for each Series A redeemable convertible preferred share held immediately prior to the Conversion;
- holders of Series B redeemable convertible preferred shares of Day One LLC will receive one share of Series B redeemable convertible preferred stock of Day One Biopharmaceuticals, Inc. for each Series B redeemable convertible preferred share held immediately prior to the Conversion;
- holders of common shares of Day One LLC will receive one share of common stock of Day One Biopharmaceuticals, Inc. for each common share held immediately prior to the Conversion;
- each outstanding incentive share in Day One LLC, all of which were intended to constitute profits interests for U.S. federal income tax purposes, will convert into a number of shares of common stock of Day One Biopharmaceuticals, Inc. based upon a conversion price determined by our board of directors. Certain of the shares of common stock issued in respect of incentive shares will continue to be subject to vesting in accordance with the vesting schedule applicable to such incentive shares; and
- pursuant to the terms of the Millennium Stock Exchange Agreement and the Plan of Conversion, Millennium Pharmaceuticals, Inc. will exchange the 9,857,143 shares of Series A redeemable convertible preferred stock of DOT Therapeutics-1, Inc. it holds for 2,782,960 shares of our common stock pursuant to and contingent upon the effectiveness of the Conversion and subject to the satisfaction of the other terms and conditions of the Millennium Stock Exchange Agreement.

The number of shares of common stock that holders of incentive shares will receive in the Conversion will be based on the fair value per common share as determined by our board of directors immediately prior to the Conversion. In this prospectus, we have assumed a fair value of $ per common share, which is the midpoint of the price range per share set forth on the cover page of this prospectus. Based on this assumed fair value of $ per common share, the incentive shares will convert into an aggregate of shares of our common stock. However, the number of shares of common stock to be issued upon conversion of the incentive shares will be affected if the initial public offering price per share of common stock in this offering differs from the midpoint of the price range set forth on the cover page of this prospectus. At a fair value of $ per common share, which is the high end of the price range per share set forth on the cover page of this prospectus, the incentive shares would convert into an aggregate of shares of our common stock. At a fair value of $ per common share, which is the low end of the price range set forth on the cover page of this prospectus, the incentive shares would convert into an aggregate of shares of our common stock.

In connection with the Conversion, Day One Biopharmaceuticals, Inc. will continue to hold all property and assets of Day One LLC and will assume all of the debts and obligations of Day One LLC. After effecting the Conversion, we will be governed by a certificate of incorporation to be filed with the Delaware Secretary of State and our bylaws. Following the Conversion, we will consummate this offering. Upon the closing of our initial public offering, shares of redeemable convertible preferred stock issued in the Conversion will convert into shares of our common stock.

In this prospectus, except as otherwise indicated or the context otherwise requires, all information is presented giving effect to the Conversion. The consolidated financial statements and selected historical consolidated financial data and other financial information included in this prospectus are those of Day One LLC and its subsidiaries and do not give effect to the Conversion.

# Special note regarding forward-looking statements

This prospectus, including the sections titled “Prospectus summary,” “Risk factors,” “Use of proceeds,” “Management’s discussion and analysis of financial condition and results of operations,” and “Business,” contains forward-looking statements about us and our industry. The words “believe,” “may,” “will,” “potentially,” “estimate,” “continue,” “anticipate,” “intend,” “could,” “would,” “project,” “plan,” “expect” and similar expressions that convey uncertainty of future events or outcomes are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words.

The forward-looking statements in this prospectus include, among other things, statements about:

- our plans to develop and commercialize our product candidates, DAY101 and pimasertib, for the treatment of patients with genetically defined cancers;
- our ability to obtain funding for our operations, including funding necessary to complete further acquisitions, development and commercialization of our product candidates;
- the timing of and our ability to obtain and maintain regulatory approvals for our product candidates, DAY101 and pimasertib, as well as our other future product candidates;
- future agreements with third parties in connection with the commercialization of our product candidates;
- the success, cost and timing of our product candidate development activities and planned clinical trials;
- our expectations regarding the impact of the COVID-19 pandemic and its potentially material adverse impact on our business, the macroeconomy, and the execution of our clinical trials;
- the rate and degree of market acceptance and clinical utility of our product candidates;
- our commercialization, marketing and manufacturing capabilities and strategy;
- the success of competing therapies that are or may become available;
- our ability to attract and retain key management and technical personnel;
- our expectations regarding our ability to obtain, maintain and enforce intellectual property protection for our product candidates;
- our use of our existing cash and cash equivalents and the net proceeds from this offering; and
- our estimates regarding expenses, future revenue, capital requirements and needs for additional financing.

These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including those described in the section titled “Risk factors” and elsewhere in this prospectus. Moreover, we operate in a competitive and rapidly changing environment, and new risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this prospectus may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

You should not rely upon forward-looking statements as predictions of future events. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee that the future results, levels of activity, performance or events and circumstances reflected in the forward-looking

statements will be achieved or occur. We undertake no obligation to update publicly any forward-looking statements for any reason after the date of this prospectus to conform these statements to actual results or to changes in our expectations, except as required by law.

You should read this prospectus and the documents that we reference in this prospectus and have filed with the SEC as exhibits to the registration statement of which this prospectus is a part with the understanding that our actual future results, levels of activity, performance and events and circumstances may be materially different from what we expect.

In addition, statements that “we believe” and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based upon information available to us as of the date of this prospectus, and while we believe such information forms a reasonable basis for such statements, such information may be limited or incomplete, and our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all potentially available relevant information. These statements are inherently uncertain and you are cautioned not to unduly rely upon these statements.

# Market and industry data

This prospectus contains estimates and other statistical data made by independent parties and by us relating to our industry and the markets in which we operate, including our general expectations and market position, market opportunity, the incidence of certain medical conditions and other industry data. These data, to the extent they contain estimates or projections, involve a number of assumptions and limitations, and you are cautioned not to give undue weight to such estimates or projections. In some cases, we do not expressly refer to the sources from which this data is derived. Industry publications and other reports we have obtained from independent parties generally state that the data contained in these publications or other reports have been obtained in good faith or from sources considered to be reliable, but they do not guarantee the accuracy or completeness of such data. The industry in which we operate is subject to risks and uncertainties due to a variety of factors, including those described in the section titled “Risk factors.” These and other factors could cause results to differ materially from those expressed in these publications and reports.

# Use of proceeds

We estimate that we will receive net proceeds of approximately $ million from the sale of shares of common stock in this offering, or approximately $ million if the underwriters exercise in full their option to purchase additional shares, assuming an initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

Each $1.00 increase or decrease in the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase or decrease, as applicable, the net proceeds to us from this offering by $ million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase or decrease of 1.0 million shares in the number of shares of common stock offered by us would increase or decrease, as applicable, the net proceeds that we receive from this offering by $ million, assuming no change in the assumed initial public offering price per share and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

We currently intend to use the net proceeds from this offering, together with our existing cash and cash equivalents, as follows:

- approximately $ million to $ million to advance the continued development of DAY101 in our pivotal Phase 2 clinical trial as a monotherapy for pediatric patients with pLGG (FIREFLY-1), in a Phase 3 clinical trial (FIREFLY-2) as a potential frontline therapy in pLGG, and in a Phase 2 clinical trial in adult RAS/RAF-altered solid tumors;
- approximately $ million to $ million to advance the development of a Phase 1b/2 clinical trial of DAY101 in combination with pimasertib in adult MAPK-altered solid tumors, fund further development or acquisitions of future preclinical and clinical programs towards IND filings and/or into clinical trials; and
- the remainder, if any, to fund pre-commercialization activities for DAY101, working capital and other general corporate purposes.

Based on our current operating plan, we expect our existing cash and cash equivalents, together with the net proceeds from this offering, will enable us to fund our operating expenses and capital expenditure requirements for at least the next months. We have based this estimate on assumptions that may prove to be wrong, and we could use our available capital resources sooner than we expect.

The expected use of the net proceeds from the offering represents our intentions based upon our current plans and business conditions. In particular, we expect such funds to enable us to . The net proceeds from this offering, together with our existing cash and cash equivalents, will not be sufficient for us to fund DAY101, pimasertib or other future product candidates through regulatory approval, and we will need to raise substantial additional capital to complete the development and commercialization of our product candidates.

The amounts we actually expend in these areas, and the timing thereof, may vary significantly from our current intentions and will depend on a number of factors, including the success of research and product development efforts, cash generated from future operations and actual expenses to operate our business. We may use a portion of the net proceeds for further acquisitions of, or investment in, businesses that complement our business, although we have no present commitments or agreements to do so.

The amounts and timing of our clinical expenditures and the extent of clinical development may vary significantly depending on numerous factors, including the status, results and timing of our current clinical

trials, and the preclinical studies and clinical trials which we may commence in the future, the product approval process with the FDA and other regulatory agencies, any new collaborations we may enter into with third parties, any unforeseen cash needs and other factors described in the section titled “Risk factors” in this prospectus. As a result, we cannot predict with any certainty all of the particular uses for the net proceeds or the amounts that we will actually spend on the uses set forth above. Accordingly, our management will have broad discretion in the application of the net proceeds, and investors will be relying on the judgment of our management regarding the application of the net proceeds of this offering.

Pending the uses described above, we intend to invest the net proceeds from this offering in short term, investment-grade interest-bearing securities such as money market accounts, certificates of deposit, commercial paper and guaranteed obligations of the U.S. government.

# Dividend policy

We have never declared or paid cash dividends on our common stock. We currently intend to retain all available funds and any future earnings for use in the operation of our business and do not anticipate paying any cash dividends on our common stock in the foreseeable future. Any future determination to declare cash dividends will be made at the discretion of our board of directors, subject to applicable laws, and will depend on a number of factors, including our financial condition, results of operations, capital requirements, contractual restrictions, general business conditions and other factors that our board of directors may deem relevant.

# Capitalization

The following table sets forth our cash and cash equivalents and capitalization as of March 31, 2021 on:

- an actual basis;
- a pro forma basis, giving effect to (i) the Conversion (assuming that the incentive shares of Day One LLC convert at a rate of one share of our common stock for each incentive share), (ii) the automatic conversion of all outstanding shares of our redeemable convertible preferred stock issued in the Conversion into an aggregate of 13,973,939 shares of our common stock immediately prior to the completion of this offering, (iii) the issuance of 2,782,960 shares of our common stock to Millennium Pharmaceuticals, Inc. in exchange for 9,857,143 shares of Series A redeemable convertible preferred stock of DOT Therapeutics-1, Inc., our subsidiary, pursuant to the Millennium Stock Exchange Agreement and the Plan of Conversion pursuant to and contingent upon the effectiveness of the Conversion and subject to the satisfaction of the other terms and conditions of the Millennium Stock Exchange Agreement; and (iv) the filing and effectiveness of our restated certificate of incorporation upon the completion of this offering; and
- a pro forma as adjusted basis, giving effect to (i) the pro forma adjustments described above and (ii) the sale of shares of common stock in this offering, at the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The pro forma as adjusted information set forth in the table below is illustrative only and will be adjusted based on the actual initial public offering price and other terms of this offering as determined at pricing.

You should read this table together with the sections titled “Conversion,” “Selected consolidated financial data” and “Management’s discussion and analysis of financial condition and results of operations” and our consolidated financial statements and related notes included elsewhere in this prospectus.

| (in thousands, except share and per share data) | As of March 31, 2021 | | |
|---|---|---|---|
| | Actual | Pro forma | Pro forma as adjusted[1] |
| | | (unaudited) | |
| Cash and cash equivalents | $154,870 | $154,870 | $ |
| Redeemable convertible preferred shares, 9,828,498 shares authorized, issued and outstanding at December 31, 2020; 13,973,939 shares authorized, issued and outstanding at March 31, 2021 | 221,721 | — | — |
| Redeemable convertible noncontrolling interest | 4,783 | — | |
| Members' deficit/shareholders': | | | |
| Common shares: 17,000,000 shares authorized and 2,596,073 shares issued and outstanding, actual, and no shares authorized, issued and outstanding, pro forma and pro forma as adjusted | 2,000 | — | |
| Incentive shares: 1,854,846 shares authorized and 1,768,614 shares issued and outstanding, actual, and no shares authorized, issued and outstanding, pro forma and pro forma as adjusted | 1,175 | — | |
| Stockholders' equity (deficit) | | | |
| Preferred stock, $0.0001 par value: no shares authorized, issued or outstanding, actual; no shares authorized and no shares issued or outstanding, pro forma; 10,000,000 shares authorized and no shares issued or outstanding, pro forma as adjusted | — | — | — |
| Common stock, $0.0001 par value: no shares issued and outstanding, actual; 500,000,000 shares authorized, shares issued and shares outstanding, pro forma; shares authorized, shares issued and outstanding, pro forma as adjusted | — | 2 | |
| Additional paid-in capital | — | 229,677 | |
| Accumulated deficit | (72,024) | (72,024) | |
| Total members'/shareholders' (deficit) equity | (68,849) | 157,655 | |
| Total capitalization | $157,655 | $157,655 | $ |

(1) The pro forma as adjusted information is illustrative only and will change based on the actual initial public offering price and other terms of this offering as determined at pricing. Each $1.00 increase or decrease in the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover of this prospectus, would increase or decrease, as applicable, each of our pro forma as adjusted cash and cash equivalents, total members'/shareholders' (deficit) equity and total capitalization by approximately $ million, assuming that the number of shares offered remains the same and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase or decrease of 1.0 million shares in the number of shares of common stock offered would increase or decrease, as applicable, each of our pro forma as adjusted cash and cash equivalents, total members'/shareholders' (deficit) equity and total capitalization by approximately $ million, assuming the assumed initial public offering price remains the same and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The number of shares of our common stock issued and outstanding, pro forma and pro forma as adjusted in the table above is based on 21,497,645 shares of our common stock outstanding as of March 31, 2021, after giving effect to:

- the Conversion (including, in connection therewith, the issuance of (i) 2,596,073 shares of common stock to holders of common shares of Day One LLC, which includes 20,841 shares of unvested restricted common stock, and (ii) 2,144,673 shares of common stock to holders of incentive shares of Day One LLC, which includes 1,859,939 shares of unvested restricted common stock; in each case assuming such common shares and incentive shares of Day One LLC convert at a rate of one share of our common stock for each common share or incentive share);

- the automatic conversion of all outstanding shares of our redeemable convertible preferred stock issued in the Conversion, into an aggregate of 13,973,939 shares of our common stock immediately prior to the completion of this offering; and
- the issuance of 2,782,960 shares of our common stock to Millennium Pharmaceuticals, Inc., pursuant to the Millennium Stock Exchange Agreement and the Plan of Conversion in exchange for 9,857,143 shares of Series A redeemable convertible preferred stock of DOT Therapeutics-1, Inc., our subsidiary, pursuant to and contingent upon the effectiveness of the Conversion and subject to the satisfaction of the other terms and conditions of the Millennium Stock Exchange Agreement.

The number of shares of our common stock to be outstanding after this offering excludes:

- shares of common stock reserved for future issuance as of March 31, 2021 under our stock-based compensation plans, consisting of (i) shares of common stock reserved for future issuance under the 2021 Plan, which will become effective on the day before the date of the effectiveness of the registration statement of which this prospectus forms a part and (ii) shares of common stock reserved for future issuance under our ESPP, which will become effective on the date of the effectiveness of the registration statement of which this prospectus forms a part. Our 2021 Plan and ESPP also provide for automatic annual increases in the number of shares reserved under the plans each year, as more fully described in the section titled “Executive compensation—Equity compensation plans and other benefit plans.”

# Dilution

If you invest in our common stock in this offering, your ownership interest will be immediately diluted to the extent of the difference between the initial public offering price per share of our common stock and the pro forma as adjusted net tangible book value per share of common stock immediately after this offering.

Our historical net tangible book value as of March 31, 2021 was $(69.7) million, or $(26.86) per share of common stock. Our historical net tangible book value is the amount of our total tangible assets less our total liabilities, redeemable convertible preferred shares and redeemable non-controlling interest. Historical net tangible book value per share represents historical net tangible book value divided by the 2,596,073 common shares outstanding as of March 31, 2021, including 20,841 unvested restricted shares subject to repurchase by us.

Our pro forma net tangible book value as of March 31, 2021 was $156.8 million, or $7.29 per share of common stock. Pro forma net tangible book value represents the amount of our total tangible assets less our total liabilities, redeemable convertible preferred shares and redeemable non-controlling interest, after giving effect to (i) the Conversion (assuming that incentive shares of Day One LLC convert at a rate of one share of our common stock for each incentive share), (ii) the automatic conversion of all outstanding shares of our preferred stock issued in the Conversion, into an aggregate of 13,973,939 shares of common stock upon the closing of this offering and (iii) the issuance of 2,782,960 shares of our common stock to Millennium Pharmaceuticals, Inc., in exchange for 9,857,143 shares of Series A redeemable convertible preferred stock of DOT Therapeutics-1, Inc., our subsidiary pursuant to the Millennium Stock Exchange Agreement and the Plan of Conversion, pursuant to and contingent upon the effectiveness of the Conversion and subject to the satisfaction of the other terms and conditions of the Millennium Stock Exchange Agreement. Pro forma net tangible book value per share represents pro forma net tangible book value divided by the total number of shares outstanding as of March 31, 2021 , after giving effect to the pro forma adjustments described above.

After giving further effect to our issuance and sale of shares of our common stock in this offering at an assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, our pro forma as adjusted net tangible book value as of March 31, 2021 would have been $ million, or $ per share. This represents an immediate increase in pro forma as adjusted net tangible book value per share of $ to existing stockholders and immediate dilution of $ in pro forma as adjusted net tangible book value per share to new investors purchasing shares of common stock in this offering. Dilution per share to new investors is determined by subtracting pro forma as adjusted net tangible book value per share after this offering from the assumed initial public offering price per share paid by new investors. The following table illustrates this dilution on a per share basis:

| | | |
|---|---|---|
| Assumed initial public offering price per share | | $ |
| Historical net tangible book value (deficit) per share as of March 31, 2021 | $(26.86) | |
| Increase per share attributable to the pro forma adjustments described above | 34.15 | |
| Pro forma net tangible book value per share as of March 31, 2021 | 7.29 | |
| Increase in pro forma net tangible book value per share attributable to new investors purchasing shares of common stock in this offering | | |
| Pro forma as adjusted net tangible book value per share | | |
| Dilution per share to investors participating in this offering | | $ |

The dilution information discussed above is illustrative only and will change based on the actual initial public offering price and other terms of this offering determined at pricing.

Each $1.00 increase or decrease in the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, would increase or decrease, as applicable, our pro forma as adjusted net tangible book value per share after this offering by $ and dilution per share to new investors purchasing shares of common stock in this offering by $ , assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase of 1.0 million shares in the number of shares offered by us, as set forth on the cover page of this prospectus, would increase our pro forma as adjusted net tangible book value per share after this offering by $ and decrease the dilution per share to new investors purchasing shares of common stock in this offering by $ , assuming no change in the assumed initial public offering price per share and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. A decrease of 1.0 million shares in the number of shares offered by us, as set forth on the cover page of this prospectus, would decrease our pro forma as adjusted net tangible book value per share after this offering by $ and increase the dilution per share to new investors purchasing shares of common stock in this offering by $ , assuming no change in the assumed initial public offering price and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

If the underwriters exercise their option to purchase additional shares in full, our pro forma as adjusted net tangible book value per share after this offering would be $ , representing an immediate increase in pro forma as adjusted net tangible book value per share of $ to existing stockholders and immediate dilution in pro forma as adjusted net tangible book value per share of $ to new investors purchasing shares of common stock in this offering, assuming an initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The following table summarizes, as of March 31, 2021, on the pro forma as adjusted basis described above, the total number of shares of common stock purchased from us on an as converted to common stock basis, the total consideration paid or to be paid and the average price per share paid or to be paid by existing stockholders and by new investors in this offering at an assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, before deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. As the table shows, new investors purchasing shares of common stock in this offering will pay an average price per share substantially higher than our existing stockholders paid.

| | Shares purchased | | Total consideration | | Weighted-average price per share |
|---|---|---|---|---|---|
| **(in thousands, except share and per share amounts)** | **Number** | **Percent** | **Amount** | **Percent** | |
| Existing stockholders before this offering[1] | | % | $ | % | $ |
| New investors purchasing shares in this offering | | | | | $ |
| Total | | 100.0% | $ | 100.0% | |

(1) The presentation in this table regarding ownership by existing stockholders does not give effect to any purchases that existing stockholders may make through our directed share program or otherwise purchase in this offering.

Each $1.00 increase or decrease in the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, would increase or decrease, as applicable, the total consideration paid by new investors by $ million and, in the case of an increase, would increase the percentage of total consideration paid by new investors by percentage points and, in the case of a decrease, would decrease the percentage of total consideration paid by new investors by percentage points, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus,

remains the same. Similarly, each increase or decrease of 1.0 million shares in the number of shares offered by us, as set forth on the cover page of this prospectus, would increase or decrease, as applicable, the total consideration paid by new investors by $ million and, in the case of an increase, would increase the percentage of total consideration paid by new investors by percentage points and, in the case of a decrease, would decrease the percentage of total consideration paid by new investors by percentage points, assuming no change in the assumed initial public offering price.

The table above assumes no exercise of the underwriters' option to purchase additional shares in this offering. If the underwriters exercise their option to purchase additional shares in full, the number of shares of our common stock held by existing stockholders would be reduced to % of the total number of shares of our common stock outstanding after this offering, and the number of shares of common stock held by new investors purchasing shares of common stock in this offering would be increased to % of the total number of shares of our common stock outstanding after this offering.

The foregoing tables and calculations (other than the historical net tangible book value calculation) are based on 21,497,645 shares of our common stock outstanding as of March 31, 2021, after giving effect to:

- the Conversion (including, in connection therewith, the issuance of (i) 2,596,073 shares of common stock to holders of common shares of Day One LLC, which includes 20,841 shares of unvested restricted common stock, (ii) 2,144,673 shares of common stock to holders of incentive shares of Day One LLC, which includes 1,859,939 shares of unvested restricted common stock; in each case assuming such common shares and incentive shares of Day One LLC convert at a rate of one share of our common stock for each common share or incentive share);
- the automatic conversion of all outstanding shares of our redeemable convertible preferred stock issued in the Conversion, into an aggregate of 13,973,939 shares of our common stock immediately prior to the completion of this offering; and
- the issuance of 2,782,960 shares of our common stock to Millennium Pharmaceuticals, Inc. in exchange for 9,857,143 shares of Series A redeemable convertible preferred stock of DOT Therapeutics-1, Inc., our subsidiary, pursuant to the Millennium Stock Exchange Agreement and the Plan of Conversion, pursuant to and contingent upon the effectiveness of the Conversion and subject to the satisfaction of the other terms and conditions of the Millennium Stock Exchange Agreement.

The number of shares of our common stock to be outstanding after this offering excludes:

- shares of common stock reserved for future issuance as of March 31, 2021 under our stock-based compensation plans, consisting of (i) shares of common stock reserved for future issuance under the 2021 Plan, which will become effective on the day before the date of the effectiveness of the registration statement of which this prospectus forms a part and (ii) shares of common stock reserved for future issuance under ESPP, which will become effective on the date of the effectiveness of the registration statement of which this prospectus forms a part. Our 2021 Plan and ESPP also provide for automatic annual increases in the number of shares reserved under the plans each year, as more fully described in the section titled "Executive compensation—Equity compensation plans and other benefit plans."

# Selected consolidated financial data

The following tables present the selected consolidated financial data for Day One LLC and its consolidated subsidiaries. The selected statement of operations and comprehensive loss data presented below for the years ended December 31, 2019 and 2020 are derived from our audited consolidated financial statements included elsewhere in this prospectus. The summary statement of operations and comprehensive loss data presented below for the three months ended March 31, 2020 and 2021 are derived from our unaudited interim condensed consolidated financial statements included elsewhere in this prospectus. Our unaudited interim condensed consolidated financial statements were prepared on the same basis as our audited consolidated financial statements and, in our opinion, reflect all adjustments, consisting only of normal recurring adjustments, that are necessary for the fair statement of our interim condensed consolidated financial statements. The following selected consolidated financial data should be read in conjunction with the section titled "Management's discussion and analysis of financial condition and results of operations" and our consolidated financial statements and related notes included elsewhere in this prospectus. Our historical results are not necessarily indicative of the results that may be expected in any future period. The selected consolidated financial data in this section are not intended to replace our consolidated financial statements and are qualified in their entirety by the consolidated financial statements and related notes included elsewhere in this prospectus.

| | Year ended December 31, | | Three months ended March 31, | |
|---|---|---|---|---|
| **(in thousands, except share and per share data)** | **2019** | **2020** | **2020** | **2021** |
| | | | **(unaudited)** | |
| **Consolidated statements of operations and comprehensive loss data:** | | | | |
| **Operating expenses** | | | | |
| Research and development | $ 13,899 | $ 9,100 | $ 961 | $ 12,632 |
| General and administrative | 1,006 | 4,682 | 808 | 3,454 |
| **Total operating expenses** | 14,905 | 13,782 | 1,769 | 16,086 |
| **Loss from operations** | (14,905) | (13,782) | (1,769) | (16,086) |
| Interest expense | (2,077) | (30) | (3) | (7) |
| Other expense | (2) | (31) | (2) | (8) |
| Changes in fair value of derivative tranches liability | — | (30,000) | (218) | — |
| **Net loss and comprehensive loss** | (16,984) | (43,843) | (1,992) | (16,101) |
| Net loss attributable to redeemable convertible noncontrolling interests | (4,350) | (3,336) | (457) | (919) |
| Net loss attributable to Day One Biopharmaceuticals Holding Company, LLC members | $ (12,634) | $ (40,507) | $ (1,535) | $ (15,182) |
| Net loss per share, basic and diluted | $ (4.96) | $ (17.03) | $ (0.67) | $ (5.99) |
| Weighted-average number of common shares used in computing net loss per share, basic and diluted | 2,548,230 | 2,378,286 | 2,284,257 | 2,534,260 |
| Unaudited pro forma net loss per share attributable to Day One Biopharmaceuticals Holding Company, LLC, basic and diluted[(1)] | | $ (1.25) | | $ (0.89) |
| Unaudited pro forma weighted-average number of shares used in computing net loss per share, basic and diluted[(1)] | | 11,031,632 | | 18,078,422 |

(1) See the section titled "Management's discussion and analysis of financial conditions and results of operations—Unaudited pro forma information" for an explanation of the calculation of our basic and diluted pro forma net loss per share, and the weighted-average number of shares outstanding used in the computation of the per share amounts.

| (in thousands) | December 31, 2019 | December 31, 2020 | As of March 31, 2021 |
|---|---|---|---|
| | | | (unaudited) |
| **Consolidated balance sheet data:** | | | |
| Cash and cash equivalents | $ 27,332 | $ 43,728 | $ 154,870 |
| Working capital[1] | 25,318 | 43,075 | 155,689 |
| Total assets | 27,339 | 45,661 | 160,880 |
| Redeemable convertible preferred shares | 30,504 | 91,964 | 221,721 |
| Redeemable convertible noncontrolling interest | 5,487 | 5,702 | 4,783 |
| Total members'/shareholders' deficit | (10,673) | (54,205) | (68,849) |

(1) We define working capital as current assets less current liabilities. See our consolidated financial statements included elsewhere in this prospectus for further details regarding our current assets and current liabilities.

# Management's discussion and analysis of financial condition and results of operations

*You should read the following discussion and analysis of financial condition and operating results together with the summary consolidated financial data, our consolidated financial statements and related notes, our interim condensed consolidated financial statements and related notes, and other financial information appearing in this prospectus. This discussion contains forward-looking statements that involve risks and uncertainties. As a result of many factors, such as those set forth in the section of the prospectus titled "Risk factors" and elsewhere in this prospectus, our actual results may differ materially from those anticipated in or implied by these forward-looking statements. Please also see the section of this prospectus titled "Special note regarding forward-looking statements."*

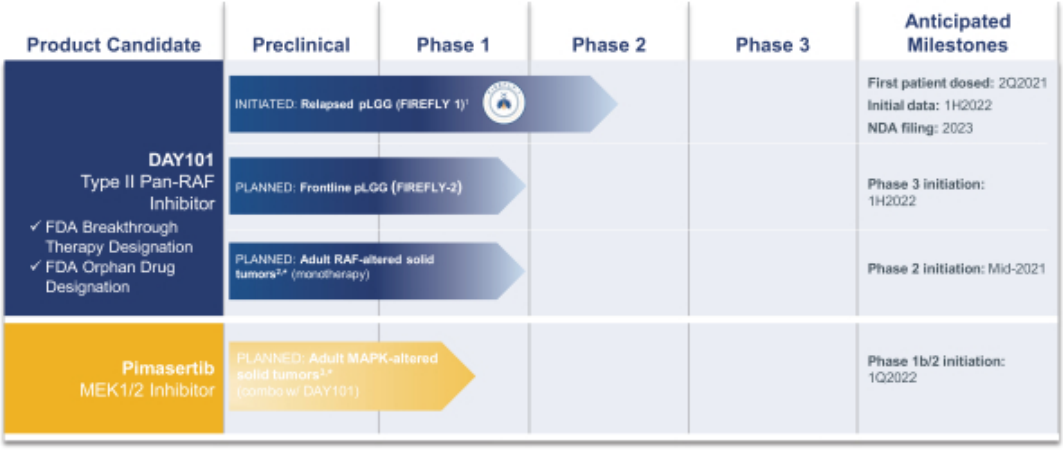
## Overview

Day One was founded to address a critical unmet need: children with cancer are being left behind in a cancer drug development revolution. Our name was inspired by the "The Day One Talk" that physicians have with patients and their families about an initial cancer diagnosis and treatment plan. We aim to re-envision cancer drug development and redefine what's possible for all people living with cancer—regardless of age—starting from Day One.

We are a clinical-stage biopharmaceutical company dedicated to developing and commercializing targeted therapies for patients of all ages with genetically defined cancers. Initially, we focus our clinical development efforts on pediatric patients living with cancer, a vulnerable population that has been underserved in the recent revolution in targeted therapeutics and immuno-oncology. Our lead product candidate, DAY101, is an oral, brain-penetrant, highly-selective type II pan-rapidly accelerated fibrosarcoma, or pan-RAF, kinase inhibitor. DAY101 has been studied in over 250 patients and has been shown to be well-tolerated as a monotherapy. DAY101 has demonstrated encouraging anti-tumor activity in pediatric and adult populations with specific genetic alterations that result in the over-activation of the RAS/mitogen- activated protein kinase, or MAPK, pathway leading to uncontrolled cell growth. We have initiated a pivotal Phase 2 trial (FIREFLY-1) of DAY101 for pediatric patients with relapsed or progressive low-grade glioma, or pLGG, the most common brain tumor diagnosed in children, for which there are no approved therapies or standard of care. We expect to dose the first patient in this trial in the second quarter of 2021, report initial data from this trial in the first half of 2022, and file a related NDA with the FDA in 2023. DAY101 has been granted Breakthrough Therapy designation by the U.S. Food and Drug Administration, or the FDA, for the treatment of pLGG, based on initial results from a Phase 1 trial which showed evidence of rapid anti-tumor activity and durable responses in pLGG patients. We also plan to study DAY101 alone or in combination with other agents that target key signaling nodes in the MAPK pathway in patient populations where various genetic alterations are believed to play an important role in driving disease.

Our second product candidate, pimasertib, is an oral, highly-selective small molecule inhibitor of mitogen-activated protein kinase kinases 1 and 2 (MEK), a well-characterized key signaling node in the MAPK pathway. We expect to initiate a Phase 1b/2 trial in the first quarter of 2022 to study the combination of DAY101 and pimasertib in patients 12 years and older with various MAPK-altered solid tumors. We believe our business development capabilities combined with our extensive experience in oncology drug development and deep ties within the research and patient advocacy communities, particularly within the pediatric setting, positions us to be a leader in identifying, acquiring and developing therapies for patients of all ages. We hold exclusive worldwide rights to both DAY101 for all oncology indications and to pimasertib for all therapeutic areas subject to certain milestone and royalty payments. For additional information, see the section titled "Business—Material agreements."

The following table summarizes our product candidate pipeline.




* Includes patients [3] 12 years of age
1 *Pivotal Phase 2 trial expected to support registration*
2 *DAY101 adult monotherapy Phase 1 dose escalation and expansion trial previously completed*
3 *Pimasertib Phase 1 dose escalation and expansion trial previously completed*

Since our inception in November 2018, we have devoted substantially all of our resources to identifying, acquiring and developing our product candidates and building our pipeline, organizing and staffing our company, business planning, establishing and maintaining our intellectual property portfolio, establishing arrangements with third parties for the manufacture of our product candidates, raising capital and providing general and administrative support for these operations. We do not have any products approved for commercial sale and have not generated any revenues from product sales or any other source and have incurred net losses since commencement of our operations. Our net losses were $17.0 million and $43.8 million for the years ended December 31, 2019 and December 31, 2020, respectively. Our net losses were $15.2 million and $1.5 million for the three months ended March 31, 2021 and 2020, respectively. We had an accumulated deficit of $72.0 million as of March 31, 2021. We expect to continue to incur significant and increasing expenses and substantial losses for the foreseeable future as we continue our development of, and seek regulatory approvals for our product candidates and commercialize any approved products, seek to expand our product pipeline and invest in our organization. In addition, upon the closing of this offering, we expect to incur additional costs associated with operating as a public company, including significant legal, audit, accounting, regulatory, tax-related, director and officer insurance, investor relations and other expenses that we did not incur as a private company.

To date, we have funded our operations through the sale of our redeemable convertible preferred shares and our convertible notes. We had $154.9 million in cash and cash equivalents as of March 31, 2021. In February 2021, we received approximately $130.0 million in connection with our Series B redeemable convertible preferred shares private financing. Based on our current operating plan, we expect our existing cash and cash equivalents will enable us to fund our operating expenses and capital expenditure requirements for at least the next months.

Because of the numerous risks and uncertainties associated with product development, we may never achieve profitability, and unless and until then, we will need to continue to raise additional capital. There are no assurances that we will be successful in obtaining an adequate level of financing to support our business plans. If we are unable to raise capital as and when needed or on attractive terms, we may have to significantly delay,

reduce or discontinue the development and commercialization of our product candidates or scale back or terminate our pursuit of new in-licenses and acquisitions.

We do not own or operate, and currently have no plans to establish, any manufacturing facilities. We rely, and expect to continue to rely, on third parties for the manufacture of our product candidates for clinical testing, as well as for commercial manufacturing if any of our product candidates obtain marketing approval. As we advance our product candidates through development, we will explore adding backup suppliers for the API, drug product, packaging and formulation for each of our product candidates to protect against any potential supply disruptions.

***COVID-19 pandemic***

In March 2020, the World Health Organization declared the global novel coronavirus disease 2019, or COVID-19, outbreak a pandemic. International and U.S. governmental authorities in impacted regions are taking actions in an effort to slow the spread of COVID-19, including issuing varying forms of “stay-at-home” orders, and restricting business functions outside of one’s home. In response, we have closed our administrative office and implemented a work-from-home policy for our employees, and we may take further actions that alter our operations as may be required by federal, state, or local authorities, or which we determine are in our best interests. The global COVID-19 pandemic continues to evolve rapidly, and we will continue to monitor it closely. While our operations to date have not been significantly impacted by the COVID-19 pandemic, we cannot at this time predict the specific extent, duration, or full impact that the COVID-19 pandemic will have on our business, financial condition and operations, including ongoing and planned clinical trials and clinical development timelines, particularly as we advance our product candidates to clinical development, the continued spread of COVID-19 and the measures taken by the governmental authorities could disrupt the supply chain and the manufacture or shipment of drug substances and finished drug products for our product candidates for use in our clinical trials, impede our clinical trial initiation and recruitment and the ability of patients to continue in clinical trials, impede testing, monitoring, data collection and analysis and other related activities. The COVID-19 pandemic could also potentially affect the business of the FDA or other regulatory authorities, which could result in delays in meetings related to our ongoing and planned clinical trials. Our clinical trials may also experience interruptions due to the COVID-19 pandemic, as hospitals prioritize their resources towards the COVID-19 pandemic. The impact of the COVID-19 pandemic on our financial performance will depend on future developments, including the duration and spread of the pandemic, its impact on our clinical trial enrollment, trial sites, CROs, contract manufacturing organizations, or CMOs, and other third parties with whom we do business, its impact on regulatory authorities and our key scientific and management personnel, progress of vaccination and related governmental advisories and restrictions. These developments and the impact of the COVID-19 pandemic on the financial markets and the overall economy are highly uncertain and cannot be predicted. If the financial markets or the overall economy are impacted for an extended period, our business may be materially adversely affected.

## Material agreements

*Takeda asset agreement*

On December 16, 2019, DOT Therapeutics-1, Inc., our subsidiary, entered into an asset purchase agreement, or the Takeda Asset Agreement, with Millennium Pharmaceuticals, Inc., an affiliate of Takeda Pharmaceutical Company Limited, or Takeda. Pursuant to the Takeda Asset Agreement, we purchased certain technology rights and know-how related to TAK-580 (which is now DAY101) being developed to treat patients with primary brain tumors or brain metastases of solid tumors. We also received clinical inventory supplies to use in our research and development activities of such RAF-inhibitor and an assigned investigator clinical trial agreement. Takeda

also assigned to us its exclusive license agreement, or the Viracta License Agreement, with Sunesis Pharmaceuticals, Inc. (which recently merged with Viracta), or Viracta. Takeda also granted us a worldwide, sublicensable exclusive license under specified patents and know-how and non-exclusive license under other patents and know-how generated by Takeda under the Takeda Asset Agreement or otherwise through practice of the technology assigned or licensed to us under the Takeda Asset Agreement, in each case, to develop, manufacture and commercialize products containing DAY101 in all fields of use except for certain specified therapeutic indications. We also granted Takeda an exclusive license under the technology assigned or licensed to us under the Takeda Asset Agreement and a non-exclusive license under any patents and know-how generated by us under the Takeda Asset Agreement or otherwise through the practice of the technology assigned or licensed to us under the Takeda Asset Agreement, in each case, only for Takeda to develop, manufacture and commercialize products containing DAY101 in the field excluded from our license grant. This grant back license to Takeda will be terminated at the time of Conversion in connection with the Millennium Stock Exchange Agreement.

In consideration for the sale and assignment of assets and the grant of the license to us under the Takeda Asset Agreement, we made an upfront payment of $1.0 million in cash and issued 9,857,143 shares of Series A redeemable convertible preferred stock in our subsidiary, DOT Therapeutics-1, Inc. We estimated fair value of issued shares as $9.9 million, based on the price paid by other investors for issued shares in the Series A financing of DOT Therapeutics-1, Inc. Pursuant to the terms of the Millennium Stock Exchange Agreement and the Plan of Conversion, Millennium Pharmaceuticals, Inc. agreed to exchange the 9,857,143 shares of Series A redeemable convertible preferred stock of DOT Therapeutics-1, Inc. for 2,782,960 shares of our common stock pursuant to and contingent upon the effectiveness of the Conversion. We recorded a total of $10.9 million consideration for license and clinical supplies as research and development expenses.

For a more complete description of our Takeda Asset Agreement, see the section titled “Business—Material agreements.”

***Millennium stock exchange agreement***

On May 4, 2021, we entered into a Stock Exchange Agreement with Millennium Pharmaceuticals, Inc. an affiliate of Takeda Pharmaceutical Company Limited, or Takeda. Pursuant to the terms of the Millennium Stock Exchange Agreement and the Plan of Conversion, Millennium Pharmaceuticals, Inc. agreed to exchange 9,857,143 shares of Series A redeemable convertible preferred stock of DOT Therapeutics-1, Inc., our subsidiary, for 2,782,960 shares of our common stock pursuant to and contingent upon the effectiveness of the Conversion, and subject to the satisfaction of the other terms and conditions of the Millenium Stock Exchange Agreement.

For a more complete description of the Millennium stock exchange agreement, see the section titled “Business—Material agreements.”

***Viracta license agreement***

On December 16, 2019, we amended and restated the Viracta License Agreement that was assigned to us pursuant to the Takeda Asset Agreement. Under the Viracta License Agreement, we received a worldwide exclusive license under specified patent rights and know-how to develop, use, manufacture, and commercialize products containing compounds binding the RAF protein family.

Under the Viracta License Agreement, we paid $2.0 million upfront in cash to Viracta, which was recorded as research and development expenses. We made a milestone payment of $3.0 million to Viracta in February 2021, which is considered a prepaid milestone, until the first patient is enrolled in the clinical trial and the milestone

is met. We are also required to make milestone payments of up to $54 million upon achievement of specified development and regulatory milestones. No milestones were achieved and recorded as of December 31, 2020 and March 31, 2021.

Total amount of consideration for assets and license acquired related to the Takeda Asset Agreement and Viracta License Agreement of $12.9 million was recorded as research and development expenses in the consolidated income statements in December 2019.

For a more complete description of our Viracta License Agreement, see the section titled “Business—Material agreements.”

***License agreement with Merck KGaA, Darmstadt, Germany***

On February 10, 2021, Day One Biopharmaceuticals, Inc., our subsidiary, entered into a license agreement, or MRKDG License Agreement, with Merck KGaA, Darmstadt, Germany, a pharmaceutical corporation located in Darmstadt, Germany. Under the MRKDG License Agreement, Merck KGaA, Darmstadt, Germany as licensor granted to Day One Biopharmaceuticals, Inc., an exclusive worldwide license, with the right to grant sublicenses through multiple tiers, under specified patent rights and know-how for us to research, develop, manufacture and commercialize products containing and comprising the pimasertib and MSC2015103B compounds. Our exclusive license grant is subject to a non-exclusive license granted by Merck KGaA, Darmstadt, Germany’s affiliate to a cancer research organization and Merck KGaA, Darmstadt, Germany retains the right to conduct, directly or indirectly, certain ongoing clinical studies relating to pimasertib. In consideration for the rights granted under the MRKDG License Agreement, we made an upfront payment of $8.0 million to the licensor, which was recorded as research and development expenses. We may also be required to make additional payments of up to $367.0 million based upon the achievement of specified development, regulatory, and commercial milestones, as well a high, single-digit royalty percentage on future net sales of licensed products, if any. Milestones and royalties are contingent upon future events and will be recorded when the milestones are achieved and when payments are due.

For a more complete description of our MRKDG License Agreement, see the section titled “Business—Material agreements.”

## Components of results of operations

***Operating expenses***

***Research and development expenses***

Research and development expenses consist primarily of external and internal expenses incurred for our research activities, including our discovery and in-licensing undertakings, and the development of our lead product candidate, DAY101.

External expenses include:

- costs associated with acquiring technology and intellectual property licenses that have no alternative future uses;
- costs incurred under agreements with third-party contract research organizations, or CROs, CMOs and other third parties that conduct clinical trials on our behalf; and
- other costs associated with our research and development programs, including laboratory materials and supplies.

Internal expenses include:

- employee-related costs, including salaries, benefits and share-based compensation expense, for our research and development personnel; and
- facilities and other overhead expenses, including expenses for rent and facilities maintenance, and amortization.

We expense research and development expenses as incurred. We track external costs by program, which currently consist of expenses for our DAY101 program. In the future, external expenses for any additional clinical programs will separately be broken out. However, we do not track indirect costs on a program specific basis because these costs are deployed across multiple programs and, as such, are not separately classified.

Research and development activities are central to our business model. We expect that our research and development expenses will increase substantially for the foreseeable future as we continue to implement our business strategy, advance DAY101 and pimasertib through clinical trials and conduct larger clinical trials, expand our research and development efforts, and identify, acquire and develop additional product candidates, particularly as more of our product candidates move into clinical development and later stages of clinical development.

We cannot reasonably determine the duration and costs to complete future clinical trials of DAY101, pimasertib or any other product candidate we may develop or acquire, or to what extent we will generate revenue from the commercialization and sale of any of our product candidates. The successful development and commercialization of our product candidates, as well as our ability to obtain the necessary regulatory and marketing approvals are highly uncertain. This is due to numerous risks and uncertainties associated with developing new drugs, many of which are outside of our control, including:

- the scope, rate of progress, expense and results of preclinical development activities, as well as of any future clinical trials of our product candidates, and other research and development activities we may conduct;
- uncertainties in clinical trial design;
- per patient trial costs;
- the number of trials required for approval;
- the number of sites included in the trials;
- the number of patients that participate in the trials;
- the countries in which the trials are conducted;
- the length of time required to enroll eligible patients;
- the drop-out or discontinuation rates of patients, particularly in light of the COVID-19 pandemic environment;
- the safety and efficacy profiles of our product candidates;
- The timing, receipt and terms of any approvals from applicable regulatory authorities, including the FDA, European Medicines Agency, Health Canada or other regulatory agencies of the investigational NDAs, clinical trial applications or other regulatory filings for DAY101 and future product candidates;
- obtaining and maintaining intellectual property protection and regulatory exclusivity for our product candidates;

- establishing clinical and commercial manufacturing capabilities or making arrangements with third-party manufacturers in order to ensure that we or our third-party manufacturers are able to make product successfully;
- retention and expansion of a workforce of experienced scientists and others to continue research and development of our product candidates;
- maintaining a continued acceptable safety profile of the products following any marketing approvals.
- significant and changing government regulation and regulatory guidance;
- the impact of any business interruptions to our operations or to those of the third parties with whom we work, particularly considering the COVID-19 pandemic environment; and
- the extent to which we establish additional strategic collaborations or other arrangements.

A change in estimates of any of these factors could mean a significant change in the costs and timing associated with the development of our current and future product candidates. For example, if the FDA or another regulatory authority were to require us to conduct clinical trials beyond those that we currently anticipate will be required for the completion of clinical development of a product candidate, or if we experience significant delays in our clinical trials due to patient enrollment or other reasons, we could be required to expend significant additional financial resources and time on the completion of clinical development.

*General and administrative expenses*

General and administrative expenses consist primarily of personnel-related costs, legal and professional service costs, insurance costs, and facility-related costs. Personnel-related costs include salaries, bonuses, benefits, stock-based compensation, travel expenses, and other related costs, for personnel in our executive, finance, corporate, business development and administrative functions. Legal and professional service expenses include legal fees related to intellectual property and corporate matters; professional fees for accounting, auditing, tax, human resources, business development, and other consulting services, stock-based compensation issued to certain nonemployee consultants, and travel expenses and facilities-related expenses.

We expect that our general and administrative expenses will increase substantially for the foreseeable future as we anticipate an increase in our personnel headcount to support expansion of research and development efforts for our product candidates, as well as to support our operations generally. We also expect an increase in expenses associated with being a public company, including costs related to compliance with the Nasdaq and SEC requirements; additional director and officer insurance costs; and investor and public relations costs.

***Interest expense***

Interest expense includes interest expense incurred on our office lease, accrued interest and amortization of debt discount on our convertible notes.

*Changes in fair value of derivative tranches liability*

Our obligation to issue additional redeemable convertible preferred shares upon the occurrence of certain milestone events represented a freestanding financial instrument. The instrument was classified as a liability in the consolidated balance sheets and re-measured at each reporting period end and at the settlement date. Changes in the fair value were recognized in other income (expense) in the consolidated statements of operations and comprehensive loss. The tranches were settled and reclassified to redeemable convertible preferred shares upon our issuance of additional Series A redeemable convertible preferred shares in November and December 2020.

***Income taxes***

Day One Biopharmaceuticals Holding Company, LLC is a “pass-through” entity under the Internal Revenue Code of 1986, as amended, or the Code, and the members are taxed directly on their respective ownership interests in the combined and consolidated income. Therefore, no provision or liability for federal income tax has been included in our consolidated financial statements. For our consolidated entities, income taxes are accounted for under the asset and liability method. Under this method, deferred income tax assets and liabilities are determined based upon the difference between the consolidated financial statement carrying amounts and the tax basis of assets and liabilities and are measured using the enacted tax rate expected to apply to taxable income in the years in which the differences are expected to be reversed.

As of December 31, 2020, we had federal net operating loss carryforwards, or NOLs, of $27.6 million that do not expire and federal tax credits of $0.8 million available to offset tax liabilities that begin to expire in 2038. We also had gross state NOLs of $27.7 million and state tax credits of $0.1 million which are available to offset state tax liabilities. The state NOLs begin to expire in 2038 and the state tax credits do not expire.

A valuation allowance is provided for deferred tax assets where the recoverability of the assets is uncertain. The determination to provide a valuation allowance is dependent upon the assessment of whether it is more likely than not that sufficient future taxable income will be generated to utilize the deferred tax assets. Based on the weight of the available evidence, which includes our consolidated entities’ historical operating losses and forecast of future losses, we have provided a full valuation allowance against the deferred tax assets resulting from the tax loss and credits carried forward.

Utilization of the net operating losses and credit carryforwards may be subject to a substantial annual limitation due to an ownership change limitation as provided by Section 382 of the Code, and similar state provisions. The annual limitation may result in the expiration of net operating losses and credits before utilization. In the event that we have a change of ownership, utilization of the net operating losses and tax credit carryforwards may be restricted.

***Net loss attributable to redeemable convertible noncontrolling interest***

Net loss attributable to redeemable convertible noncontrolling interest represents a portion of the net loss that is not allocated to us in our subsidiary, DOT Therapeutics-1, Inc.

## Results of operations

***Comparison of years ended December 31, 2019 and 2020***

The following table summarizes our results of operations for the years ended December 31, 2019 and 2020:

| | Year ended December 31, | | | |
|---|---|---|---|---|
| **(dollars in thousands)** | **2019** | **2020** | **$ Change** | **% Change** |
| **Operating expenses:** | | | | |
| Research and development | $ 13,899 | $ 9,100 | $ (4,799) | (35)% |
| General and administrative | 1,006 | 4,682 | 3,676 | 365% |
| Total operating expenses | 14,905 | 13,782 | (1,123) | (8)% |
| Loss from operations | (14,905) | (13,782) | 1,123 | (8)% |
| Interest expense | (2,077) | (30) | 2,047 | (99)% |
| Other expense | (2) | (31) | (29) | * |
| Changes in fair value of derivative tranches liability | — | (30,000) | (30,000) | * |
| Net loss and comprehensive loss | (16,984) | (43,843) | (26,859) | 158% |
| Net loss attributable to redeemable convertible noncontrolling interests | (4,350) | (3,336) | 1,014 | (23)% |
| Net loss attributable to Day One Biopharmaceuticals Holding Company, LLC members | $(12,634) | $(40,507) | $(27,873) | 221% |

* not meaningful

*Research and development expenses*

Research and development expenses for the year ended December 31, 2020 were $9.1 million, compared with $13.9 million for the year ended December 31, 2019. In December 2019, we recorded $12.9 million of research and development expenses related to Takeda Asset Agreement and the Viracta License Agreement, and no such expense related to those agreements was recorded in the year ended December 31, 2020. As we completed the Takeda technology transfer and initiated our clinical trial, our clinical trial expenses related to our DAY101 product candidate were $2.2 million in the year ended December 31, 2020. We had no clinical trial expenses recorded in the year ended December 31, 2019. Other third-party and consulting services expenses increased by $3.2 million, from $0.2 million in the year ended December 31, 2019 year to $3.4 million in the year ended December 31, 2020. Our personnel related expenses increased by $2.7 million, from $0.8 million in the year ended December 31, 2019 year to $3.5 million in the year ended December 31, 2020 year. The increase in personnel costs was attributable to an increase in headcount in 2020 as well as full year salaries paid to certain research and development key employees in 2020 that were hired in the second half of 2019. We expect that our research and development expenses continue to increase to support our product candidates' clinical development, licensing of new product candidates and hiring and expanding our internal research and developments operations.

The following table summarizes our external and internal research and development expenses for the years ended December 31, 2019 and 2020:

| (in thousands) | Year ended December 31, 2019 | 2020 |
|---|---|---|
| External costs:[1] | | |
| Acquired technology and intellectual property license costs | $12,857 | $ — |
| Third-party CRO, CMO and other third party clinical trial costs | — | 2,206 |
| Other research and development costs, including laboratory materials and supplies | 198 | 3,410 |
| Internal costs:[2] | | |
| Employee-related costs | 844 | 3,484 |
| Total research and development expenses | $13,899 | $9,100 |

(1) During 2019 and 2020, consisted of costs for our DAY101 program.

(2) During 2019 and 2020, internal facilities and overhead expenses allocated to research and development were not material.

*General and administrative expenses*

General and administrative expenses were $4.7 million for the year ended December 31, 2020, compared with $1.0 million for the year ended December 31, 2019. The increase of $3.7 million was primarily due to an increase in personnel costs of $0.8 million, an increase in legal and professional services of $2.1 million, and an increase in facilities costs and other expenses of $0.7 million, as we expanded our operations to support advancement of DAY101 in clinical trials and our growth business strategy.

*Interest expense*

Interest expense decreased by $2.0 million, during the year ended December 31, 2020 compared to the year ended December 31, 2019. In December 2019, we recognized as a debt discount, a beneficial conversion feature of $2.0 million associated with our convertible notes. Debt discount was amortized to interest expense upon notes conversion. See Note 9 to our consolidated financial statements included elsewhere in this prospectus for more detail.

*Changes in fair value of derivative tranches liability*

In 2020, we recognized changes in fair value of derivative tranches liability related to milestone closings of Series A redeemable convertible preferred shares in the amount of $30.0 million. See section “Changes in fair value of derivative tranches liability” above and Notes 2, 3 and 10 to our consolidated financial statements included elsewhere in this prospectus for more detail.

***Comparison of three months ended March 31, 2020 and 2021***

The following table summarizes our results of operations for the three months ended March 31, 2020 and 2021 (unaudited):

| | Three months ended March 31, | | | |
|---|---|---|---|---|
| **(dollars in thousands)** | **2020** | **2021** | **$ Change** | **% Change** |
| **Operating expenses:** | | | | |
| Research and development | $ 961 | $ 12,632 | $ 11,671 | 1214% |
| General and administrative | 808 | 3,454 | 2,646 | 327% |
| Total operating expenses | 1,769 | 16,086 | 14,317 | 809% |
| Loss from operations | (1,769) | (16,086) | (14,317) | 809% |
| Interest expense | (3) | (7) | (4) | * |
| Other expense | (2) | (8) | (6) | * |
| Changes in fair value of derivative tranches liability | (218) | — | 218 | * |
| Net loss and comprehensive loss | (1,992) | (16,101) | (14,109) | 708% |
| Net loss attributable to redeemable convertible noncontrolling interests | (457) | (919) | (462) | 101% |
| Net loss attributable to Day One Biopharmaceuticals Holding Company, LLC members | $(1,535) | $(15,182) | $(13,647) | 889% |

* not meaningful

*Research and development expenses*

Research and development expenses for the three months ended March 31, 2020 were $1.0 million, compared with $12.6 million for the three months ended March 31, 2021. In February 2021, we recorded an $8.0 million expense related to the License Agreement with Merck KGaA, Darmstadt, Germany, and no such expense was recorded in the three months ended March 31, 2020. Other third-party and consulting services expenses increased by $2.3 million, from $0.1 million in the three months ended March 31, 2020 to $3.4 million in the three months ended March 31, 2021, due to increase in clinical trial expenses and other product development expenses. Our personnel related expenses increased by $0.5 million, from $0.7 million in the three months ended March 31, 2020 to $1.2 million in the three months ended March 31, 2021. The increase in personnel costs was attributable to an increase in headcount in the three months ended March 31, 2021 compared to the same period in 2020. We expect that our research and development expenses will continue to increase to support our product candidates' clinical development, licensing of new product candidates and hiring and expanding our internal research and developments operations.

The following table summarizes our external and internal research and development expenses for the three months ended March 31, 2020 and 2021 (unaudited):

| (in thousands) | Three months ended March 31, 2020 | 2021 |
|---|---|---|
| External costs: | | |
| Acquired technology and intellectual property license costs | $ — | $ 8,000 |
| Third-party CRO, CMO and other third-party clinical trial costs | 169 | 3,434 |
| Other research and development costs, including laboratory materials and supplies | 52 | 42 |
| Internal costs: | | |
| Employee related expenses | 740 | 1,156 |
| Total research and development expenses | $961 | $12,632 |

*General and administrative expenses*

General and administrative expenses increased $2.7 million, from $0.8 million for the three months ended March 31, 2020 to $3.5 million for the three months ended March 31, 2021. The increase of $2.7 million was primarily due to an increase in personnel costs of $1.1 million, an increase in legal and professional services of $1.3 million, and an increase in facilities costs and other expenses of $0.1 million, as we expanded our operations to support advancement of DAY101 in clinical trials and our growth business strategy.

*Changes in fair value of derivative tranches liability*

During three months ended March 31, 2020, we recorded $0.2 million expense as it relates to changes in fair value of derivative tranches liability related to milestone closings of the Series A redeemable convertible preferred shares financing round. As of December 31, 2020, derivative tranche liability was settled and there was no such expense recognized during the three months ended March 31, 2021.

## Unaudited pro forma information

*Pro forma net loss per share attributable to common stockholders*

The unaudited pro forma basic and diluted net loss per share attributable to common shareholders for the year ended December 31, 2020 and for three months ended March 31, 2021, has been prepared to give effect to (i) the Conversion, including the conversion of common shares and incentive shares to common stock, (ii) the automatic conversion of outstanding redeemable convertible preferred shares to common stock upon a qualified IPO, and (iii) the issuance of 2,782,960 shares of common stock to Millennium Pharmaceuticals, Inc., pursuant to the Millennium Stock Exchange Agreement, contingent upon the effectiveness of the Conversion, as if the Conversion and the IPO had occurred on the later of the beginning respective reporting period or the issuance date of the shares. Vested incentive shares will be exchanged to shares of common stock shares and unvested incentive shares will be exchanged to shares of restricted common stock shares of the Corporation, based on the conversion ratio approved by the Board of Directors. Pro forma net loss attributable to common stockholders was based on our net loss and adjusted for the changes in fair value of the redeemable convertible preferred stock tranche liability that was outstanding during the year December 31, 2020, and net loss allocated to redeemable noncontrolling interest, as this represents a Millennium Pharmaceuticals, Inc. ownership in our subsidiary.

Upon Conversion to a corporation, we will become subject to U.S. federal and state income taxes. Based on our history of generating operating losses and its anticipation of operating losses continuing in the foreseeable future, was have determined that it is more likely than not that the tax benefits from our operating losses would not be realized and have determined that a full valuation allowance against its net deferred tax assets would be recorded on a pro forma basis. Therefore, for the purposes of the pro forma tax provision, we have not recorded an income tax expense or benefit for the net losses incurred by us during the year ended December 31, 2020 and three months ended March 31, 2021.

Pro forma basic and diluted net loss per share attributable to common shareholders for the year ended December 31, 2020 and for three months ended March 31, 2021 was calculated as follows:

| (in thousand except share and per share amounts) | Year ended December 31, 2020 | Three months ended March 31, 2021 (unaudited) |
|---|---|---|
| Net loss | $ (43,843) | $ (16,102) |
| Tranche liability remeasurement | 30,000 | — |
| Pro forma net loss attributable to common stockholders | (13,843) | (16,102) |
| Weighted-average common stock outstanding | 2,378,286 | 2,534,260 |
| Pro forma adjustment to reflect assumed conversion of redeemable convertible preferred shares to common stock upon the Conversion | 5,792,139 | 12,537,380 |
| Pro forma adjustment to reflect assumed conversion of incentive shares to common stock upon the Conversion | 78,247 | 223,822 |
| Pro forma adjustment to reflect issuance of common stock shares to Millennium Pharmaceuticals, Inc. | 2,782,960 | 2,782,960 |
| Pro forma weighted-average common stock outstanding—basic and diluted | 11,031,632 | 18,078,422 |
| | ($1.25) | ($0.89) |

## Liquidity and capital resources

***Sources of liquidity***

We do not currently have any approved products and have never generated any revenue from product sales. To date, we have funded our operations through the sale of our redeemable convertible preferred shares and convertible notes. Through March 2021, we have raised approximately $192.0 million in gross proceeds from the sale and issuance of our of Series A and Series B redeemable convertible preferred shares and convertible notes.

***Cash flows***

We had cash and cash equivalents of $43.7 million as of December 31, 2020 and $154.9 million as of March 31, 2021. The following table summarizes our sources and uses of cash for the periods presented:

| (in thousands) | Year ended December 31, 2019 | Year ended December 31, 2020 | Three months ended March 31, 2020 (unaudited) | Three months ended March 31, 2021 (unaudited) |
|---|---|---|---|---|
| Net cash used in operating activities | (4,515) | (13,489) | (2,085) | (17,744) |
| Cash used in investing activities | — | (92) | (88) | — |
| Net cash provided by financing activities | 30,905 | 29,977 | — | 128,886 |
| Net increase in cash and cash equivalents | $26,390 | $ 16,396 | $ (2,173) | $ 111,142 |

*Operating activities*

Net cash used in operating activities for the year ended December 31, 2020 was $13.5 million, consisting of net loss of $43.8 million, net decrease in our operating assets and liabilities of $0.4 million, partially offset by our non-cash charges of $30.7 million. Our non-cash charges included changes in fair value of the Series A derivative tranches liability of $30.0 million, share-based compensation expense of $0.5 million, and amortization of right-of-use assets expense of $0.1 million.

Net cash used in operating activities for the year ended December 31, 2019 was $4.5 million, consisting of our net loss of $17.0 million, partially offset by an increase of $0.5 million in net operating assets and liabilities and by non-cash charges of $12.0 million. Changes in operating assets and liabilities were primarily related to an increase in accrued expenses and other current liabilities of $0.5 million. Our non-cash charges included issuance of shares for research and development under the Takeda Asset Agreement of $9.9 million, recognition of contingent beneficial conversion feature of $2.0 million, interest expense accrued on convertible notes of $0.1 million, and share-based compensation expense of $0.1 million.

Net cash used in operating activities for the three months ended March 31, 2021 was $17.7 million, consisting of our net loss of $16.1 million, net decrease of $2.2 million in net operating assets and liabilities, partially offset by non-cash charges of $0.6 million. Changes in operating assets and liabilities were primarily related to an increase in prepaid expenses and other current assets of $2.5 million, which includes $3.0 prepayment of the Viracta license milestone. Our non-cash charges primarily consisted of $0.5 million in share-based compensation expense.

Net cash used in operating activities for the three months ended March 31, 2020 was $2.1 million, consisting of net loss of $2.0 million, net decrease in our operating assets and liabilities of $0.4 million, partially offset by our non-cash charges of $0.3 million. Our non-cash charges included changes in fair value of the Series A derivative tranches liability of $0.2 million and share-based compensation expense of $0.1 million.

*Investing activities*

Net cash used in investing activities for the year ended December 31, 2020 was $0.1 million, attributable to the purchases of property and equipment.

We had no net cash used in investing activities for the year ended December 31, 2019.

Net cash used in investing activities for the three months ended March 31, 2020 was $0.1 million, attributable to the purchases of property and equipment.

We had no net cash used in investing activities for the three months ended March 31, 2021.

*Financing activities*

Net cash provided by financing activities for the year ended December 31, 2020 was $30.0 million related to the net proceeds from the issuance of the second and third tranches of Series A redeemable convertible preferred shares in November and December 2020.

Net cash provided by financing activities for the year ended December 31, 2019 was $30.9 million related to the net proceeds from the issuance of the first tranche of Series A redeemable convertible preferred shares in December 2019 of $29.9 million and the net proceeds from the convertible note of $1.0 million.

Net cash provided by financing activities for the three months ended March 31, 2021 was $129.8 million related to the net proceeds from the sale and issuance of Series B redeemable convertible preferred shares, partially offset by $0.9 million in payments of financing issuance costs in connection with the potential initial public offering.

We had no net cash used in financing activities for the three months ended March 31, 2020.

## Funding requirements

Since our inception, we have incurred significant operating losses. We expect to continue to incur significant expenses and increasing operating losses for the foreseeable future in connection with our ongoing activities.

Specifically, we anticipate that our expenses will increase substantially if and as we:

- advance the clinical development of DAY101 and pimasertib;
- pursue the clinical development of other potential research programs and product candidates;
- in-license or acquire the rights to other products, product candidates or technologies;
- seek regulatory and marketing approval for any product candidates that successfully complete clinical trials;
- expand, maintain and protect our intellectual property portfolio;
- increase our clinical, regulatory and scientific personnel; and
- add operational, financial and management information systems and increase personnel to support our research, business development and future commercialization efforts and support our operations as a public company.

We believe that the anticipated net proceeds from this offering, together with our existing cash and cash equivalents, will enable us to fund our operating expenses and capital expenditure requirements for at least the next months. We have based this estimate on assumptions that may prove to be imprecise, and we could use our available capital resources sooner than we currently expect. Our future capital requirements will depend on many factors, including:

- the progress, costs and results of our clinical trials for DAY101 and any future clinical development of DAY101;
- the progress, costs and results of our clinical trials for product candidates containing and comprising pimasertib;
- the progress, costs and results of preclinical and clinical development for our future potential product candidates and development programs;
- the costs, timing and outcome of regulatory review of DAY101, pimasertib and our other potential product candidates;
- the costs and timing of future commercialization activities, including product manufacturing, marketing, sales and distribution, for DAY101, pimasertib and any of our potential product candidates for which we receive marketing approval;
- the extent to which we pursue in-license or acquire rights to other products, product candidates or technologies;
- our headcount growth and associated costs as we expand our business operations and research and development activities;
- the costs and timing of preparing, filing and prosecuting patent applications, maintaining and protecting our intellectual property rights and defending any intellectual property-related claims;
- our ability to establish collaboration arrangements to develop or commercialize our product candidates; and

- the effects of the recent disruptions to and volatility in the credit and financial markets in the United States and worldwide from the COVID-19 pandemic.

As a result of these anticipated expenditures, we will need to obtain substantial additional financing in connection with our continuing operations. Until such time, if ever, as we can generate substantial revenue from product sales, we expect to finance our cash needs through a combination of equity offerings, debt financings, collaborations, strategic alliances and marketing, distribution or licensing arrangements. Adequate additional funds may not be available to us on acceptable terms, or at all. If we are unable to raise capital when needed or on attractive terms, we may be required to delay, limit, reduce or terminate our research, product development programs or any future commercialization efforts or grant rights to develop and market product candidates that we would otherwise prefer to develop and market ourselves.

To the extent that we raise additional capital through the sale of equity or convertible debt securities, your ownership interest will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect your rights as a common stockholder. Debt financing and preferred equity financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making acquisitions or capital expenditures or declaring dividends.

If we raise additional funds through collaborations, strategic alliances or marketing, distribution 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 grant licenses on terms that may not be favorable to us.

Our ability to raise additional funds may be adversely impacted by potential worsening global economic conditions and disruptions to and volatility in the credit and financial markets in the United States and worldwide resulting from the ongoing COVID-19 pandemic or otherwise. Because of the numerous risks and uncertainties associated with product development, we cannot predict the timing or amount of increased expenses and cannot assure you that we will ever be profitable or generate positive cash flow from operating activities.

## Contractual obligations and commitments

The following is our contractual obligations and commitments as of December 31, 2020:

| | | Payments due by period | | | |
|---|---|---|---|---|---|
| **(in thousands)** | **Total** | **Less than 1 year** | **1 to 3 years** | **3 to 5 years** | **More than 5 years** |
| Operating lease obligations[1] | $435 | $ 205 | $ 230 | — | — |

(1) Represents our future minimum lease obligation under our non-cancelable operating a lease for our corporate headquarters in South San Francisco, California, which expires in February 2023.

We enter into contracts in the normal course of business with CROs for clinical trials, with CMOs for clinical supplies manufacturing and with other vendors for preclinical studies, supplies and other services and products for operating purposes. These contracts generally provide for termination on notice and may have a termination fees and non-cancellable commitments. As of December 31, 2020, there were no amounts accrued related to termination and cancellation charges as these are not probable and our non-cancelable obligations under these agreements were not material.

We entered into licensing agreements, which require us to pay milestones contingent upon meeting of specific events. No such milestones were achieved, due or payable as of December 31, 2020. We are required to pay

royalties on sales of products developed under these agreements. All our products are in development as of December 31, 2020 and no such royalties are due. We have not included any such contingent payment obligations in the table above as the amount, timing and likelihood of such payments are not known. For additional details, see the subsection titled “Significant agreements” above. We have not had any material changes to our contractual obligations and commitments as of March 31, 2021.

***Critical accounting policies and use of estimates***

Our management’s discussion and analysis of financial condition and results of operations is based on our consolidated financial statements, which have been prepared in accordance with generally accepted accounting principles in the United States, or GAAP. The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of expenses during the reporting period. Significant estimates and assumptions made in the accompanying consolidated financial statements include, but are not limited to, the fair value of the redeemable convertible preferred shares, the fair value of the common shares, the fair value of the derivative tranches liability, the valuation of share-based awards, the valuation of deferred tax assets and income tax uncertainties, and accruals for research and development activities. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable. Actual results may differ from those estimates or assumptions.

While our significant accounting policies are described in more detail in the notes to our consolidated financial statements appearing at the end of this prospectus, we believe that the following accounting policies are those most critical to the judgments and estimates used in the preparation of our consolidated financial statements.

*Accrued research and development expenses*

We record accrued liabilities for estimated costs of our research and development activities conducted by third- party service providers, which include the conduct of preclinical and clinical studies, and contract manufacturing activities. We record the estimated costs of research and development activities based upon the estimated amount of services provided but not yet invoiced and include these costs in accrued liabilities in the balance sheets and within research and development expenses in the consolidated statement of operations and comprehensive loss. These costs are a significant component of our research and development expenses. We accrue for these costs based on factors such as estimates of the work completed and in accordance with agreements established with our third-party service providers under the service agreements. If we do not identify costs that have begun to be incurred or if it underestimates or overestimates the level of services performed or the costs of these services, actual expenses could differ from our estimates. To date, we have not experienced any material differences between accrued costs and actual costs incurred.

We make payments in connection with clinical trials under contracts with contract manufacturing organizations and contract research organizations that support conducting and managing clinical trials. The financial terms of these contracts are subject to negotiation, which vary by contract and may result in payments that do not match the periods over which materials or services are provided. Generally, these agreements set forth the scope of work to be performed at a fixed fee, unit price or on a time and materials basis. In the event we make advance payments for goods or services that will be used or rendered for future research and development activities, the payments are deferred and capitalized as a prepaid expense and recognized as expense as the goods are received or the related services are rendered. Such payments are evaluated for current or long-term classification based on when they are expected to be realized.

*Share-based compensation*

We grant incentive shares to employees and non-employees under the Incentive Share Plan, which generally vest over a four-year period with cliff vesting for the first year. The incentive shares represent a separate substantive class of equity shares. We also granted common shares with service and performance vesting conditions to our executives and a consultant.

We recognize share-based compensation expense based on the estimated fair value of all share-based awards, incentive shares and restricted common stock shares, on the date of grant using the option-pricing model. The option pricing model requires the input of subjective assumptions, including the fair value of the underlying common shares, the expected term of the award, the expected volatility, risk-free interest rates, and the dividend yield. The participation threshold amounts are based at the common share fair value as determined by our board of directors at the time of grant. The expected life of the awards granted during the period was determined based on an expected time to the liquidation event. We applied the risk-free interest rate based on the U.S. Treasury yield in effect at the time of the grant consistent with the life of the award. The expected volatility is based on a peer group in the industry in which we do business is consistent with the expected time to liquidity. The dividend yield was set at zero as the underlying security does not and is not expected to pay a dividend.

We recognize forfeitures by reducing the expense in the same period the forfeitures occur. We recognize share- based compensation expense for awards with performance conditions when it is probable that the condition will be met, and the award will vest. We classify share-based compensation expense in the consolidated statement of operations and comprehensive loss in the same manner in which the award recipients' payroll costs are classified or in which the award recipients' service payments are classified.

We recorded share-based compensation expense of $0.1 million and $0.5 million for the years ended December 31, 2019 and 2020, respectively. We recorded share-based compensation expense of $0.1 million and $0.5 million for the three months ended March 31, 2020 and 2021, respectively. As of December 31, 2020, there was $4.6 million of total unrecognized compensation expense related to 1,564,053 unvested incentive shares, which we expect to recognize over a remaining weighted-average period of 2.6 years. As of March 31, 2021, there was $8.0 million of total unrecognized compensation expense related to 1,859,939 unvested incentive shares, which we expect to recognize over a remaining weighted-average period of 2.2 years. We expect to continue to grant equity-based awards in the future, and to the extent that we do, our share-based compensation expense recognized in future periods will likely increase.

The intrinsic value of all outstanding incentive awards as of was $ million based on the assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, of which approximately $ million was related to vested incentive shares and approximately $ million was related to unvested incentive shares.

*Fair value of common shares*

In determining the fair value of common shares, the methodologies used to estimate the enterprise value were performed using methodologies, approaches, and assumptions consistent with the American Institute of Certified Public Accountants *Accounting and Valuation Guide, Valuation of Privately-Held-Company Equity Securities Issued as Compensation*, or the Practice Aid. Our management's approach to estimate the fair value of the common shares considered a number of objective and subjective factors including: valuations of common shares performed with the assistance of independent third-party valuation specialists; our stage of development and business strategy, including the status of research and development efforts, and the material risks related to the business and industry; our results of operations and financial position, including levels of

available capital resources; the valuation of publicly traded companies in the life sciences and biotechnology sectors, as well as recently completed mergers and acquisitions of peer companies; the lack of marketability of the common shares; the prices of redeemable convertible preferred shares sold to investors in arm's length transactions and the rights, preferences, and privileges of our redeemable convertible preferred shares relative to those of common shares; the likelihood of achieving a liquidity event for the holders of the common and redeemable convertible preferred shares, such as an initial public offering or a sale, given prevailing market conditions.

For our valuations performed on and prior to June 30, 2020, we utilized an Option Pricing Method, or OPM, based analysis, primarily the OPM Backsolve methodology, to determine the estimated fair value of our common shares. We determined this was the most appropriate method for determining the fair value of our common shares based on our stage of development and other relevant factors. Within the OPM framework, the Backsolve method for inferring the total equity value implied by a recent financing transaction involves the construction of an allocation model that takes into account our capital structure and the rights and preferences of each class of shares, then assumes reasonable inputs for the other OPM variables (expected time to liquidity, volatility, risk-free rate, etc.). The total equity value is then iterated in the model until the model output value for the equity class sold in a recent financing round equals the price paid in that round. The OPM is generally utilized when specific future liquidity events are difficult to forecast, i.e., the entity has many choices and options available, and the entity's value depends on how well it follows an uncharted path through the various possible opportunities and challenges. In determining the estimated fair value of our common shares, management also considered the fact that our members could not freely trade our common shares in the public markets. Accordingly, we applied discounts to reflect the lack of marketability of our common stock share on the weighted-average expected time to liquidity. The estimated fair value of our common share at each valuation date reflected a non-marketability discount partially based on the anticipated likelihood and timing of a future liquidity event.

For our valuations performed after June 30, 2020, we utilized a hybrid method that combines the Probability- Weighted Expected Return Method, or PWERM, an accepted valuation method described in the Practice Aid, and the OPM. We determined this was the most appropriate method for determining the fair value of our common shares based on our stage of development and other relevant factors. The PWERM is a scenario-based analysis that estimates the value per common share based on the probability-weighted present value of expected future equity values for the common share, under various possible future liquidity event scenarios, considering the rights and preferences of each class of shares, discounted for a lack of marketability. Under the hybrid method, an OPM Backsolve was utilized to determine the fair value of our common share in certain of the PWERM scenarios (capturing situations where our development path and future liquidity events were difficult to forecast) and potential initial public offering exit events were explicitly modeled in the other PWERM scenarios. A discount for lack of marketability was applied to the value derived under each scenario to account for a lack of access to an active public market.

The assumptions underlying these valuations represented management's best estimates, which involved inherent uncertainties and the application of management's judgment. As a result, if we had used significantly different assumptions or estimates, the fair value of our common stock and our stock-based compensation expense could have been materially different.

Following the closing of this offering, our board of directors will determine the fair market value of our common stock based on its closing price as reported on the date of grant on the primary stock exchange on which our common stock is traded.

## New accounting pronouncements

For information on new accounting standards, see Note 2 to our consolidated financial statements appearing elsewhere of this prospectus.

## Off-balance sheet arrangements

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

## Quantitative and qualitative disclosures about market risk

*Interest rate risk*

The primary objectives of our investment activities are to ensure liquidity and to preserve capital. We are exposed to market risks in the ordinary course of our business. These risks primarily include interest rate sensitivities. We had cash and cash equivalents of $154.9 million as of March 31, 2021. Historical fluctuations in interest rates have not been significant for us, and we believe a hypothetical 10% change in interest rates during any of the periods presented would not have had a material effect on our consolidated financial statements included elsewhere in this prospectus. We had no outstanding debt as of March 31, 2021. To minimize the risk in the future, we intend to maintain our portfolio of cash equivalents in institutional market funds that are composed of U.S. Treasury and U.S. Treasury-backed repurchase agreements or short-term U.S. Treasury securities.

*Foreign currency exchange risk*

All of our employees and our operations are currently located in the United States and our expenses are generally denominated in U.S. dollars. We therefore are not currently exposed to significant market risk related to changes in foreign currency exchange rates. However, in the future, we expect that we will have increased foreign exposures as we expand our non-U.S. activities, such as certain non-U.S. clinical trials and third party relationships. To date, foreign currency transaction gains and losses have not been material to our consolidated financial statements, and we have not had a formal hedging program with respect to foreign currency. We believe a hypothetical 10% change in exchange rates during any of the periods presented would not have a material effect on our consolidated financial statements included elsewhere in this prospectus.

*Effects of inflation*

Inflation generally affects us by increasing our cost of labor and clinical trial costs. We believe that inflation has not had a material effect on our consolidated financial statements included elsewhere in this prospectus.

## Emerging growth company and smaller reporting company status

We are an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. We have elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that we (i) are no longer an emerging growth company or (ii) affirmatively and irrevocably opts out of the extended transition period provided in the JOBS Act. As a result, our consolidated financial statements may not be comparable to companies that comply with the new or revised accounting pronouncements as of public company effective dates.

We expect to use the extended transition period for any other new or revised accounting standards during the period in which it remains an emerging growth company. As described in “Recently adopted accounting pronouncements” in our consolidated financial statements included elsewhere in this prospectus, we early adopted multiple accounting standards, as the JOBS Act does not preclude an emerging growth company from adopting a new or revised accounting standard earlier than the time that such standard applies to private companies.

We are also a “smaller reporting company,” meaning that the market value of our stock held by non-affiliates plus the proposed aggregate amount of gross proceeds to us as a result of this offering is less than $700.0 million and our annual revenue is less than $100.0 million during the most recently completed fiscal year. We may continue to be a smaller reporting company after this offering if either (i) the market value of our stock held by non-affiliates is less than $250.0 million or (ii) our annual revenue is less than $100.0 million during the most recently completed fiscal year and the market value of our stock held by non-affiliates is less than $700.0 million.

If we are a smaller reporting company at the time we cease to be an emerging growth company, we may continue to rely on exemptions from certain disclosure requirements that are available to smaller reporting companies. Specifically, as a smaller reporting company we may choose to present only the two most recent fiscal years of audited financial statements in our Annual Report on Form 10-K and, similar to emerging growth companies, smaller reporting companies have reduced disclosure obligations regarding executive compensation.

# Business

## Overview

Day One was founded to address a critical unmet need: children with cancer are being left behind in a cancer drug development revolution. Our name was inspired by the “The Day One Talk” that physicians have with patients and their families about an initial cancer diagnosis and treatment plan. We aim to re-envision cancer drug development and redefine what’s possible for all people living with cancer–regardless of age–starting from Day One.

We are a clinical-stage biopharmaceutical company dedicated to developing and commercializing targeted therapies for patients of all ages with genetically defined cancers. Initially, we focus our clinical development efforts on pediatric patients living with cancer, a vulnerable population that has been underserved in the recent revolution in targeted therapeutics and immuno-oncology. Our lead product candidate, DAY101, is an oral, brain-penetrant, highly-selective type II pan-rapidly accelerated fibrosarcoma, or pan-RAF, kinase inhibitor. DAY101 has been studied in over 250 patients and has been shown to be well-tolerated as a monotherapy. DAY101 has demonstrated encouraging anti-tumor activity in pediatric and adult populations with specific genetic alterations that result in the over-activation of the RAS/mitrogen-activated protein kinase, or MAPK, pathway leading to uncontrolled cell growth. We have initiated a pivotal Phase 2 trial of DAY101 for pediatric patients with relapsed or progressive low-grade glioma, or pLGG, the most common brain tumor diagnosed in children, for which there are no approved therapies and no standard of care. We expect to dose the first patient in this trial in the second quarter of 2021, to report initial data from this trial in the first half of 2022, and to file a related New Drug Application, or NDA with the U.S. Food and Drug Administration, or FDA, in 2023. DAY101 has been granted Breakthrough Therapy designation by the FDA for the treatment of pLGG, based on initial results from a Phase 1 trial which showed evidence of rapid anti-tumor activity, a greater than 50% monotherapy response rate and durable responses in pLGG patients. We also plan to study DAY101 alone or in combination with additional agents that target other key signaling nodes in the MAPK pathway in patient populations where various genetic alterations are believed to play an important role in driving disease.

Our second product candidate, pimasertib, is an oral, highly-selective small molecule inhibitor of mitogen-activated protein kinase kinases 1 and 2 (MEK), a well-characterized key signaling node in the MAPK pathway. We expect to initiate a Phase 1b/2 trial in the first quarter of 2022 to study the combination of DAY101 and pimasertib in patients 12 years and older with various MAPK-altered solid tumors. We believe our business development capabilities combined with our extensive experience in oncology drug development and deep ties within the research and patient advocacy communities, particularly within the pediatric setting, positions us to be a leader in identifying, acquiring and developing therapies for patients of all ages. We hold exclusive worldwide rights to DAY101 for all oncology indications and to pimasertib for all therapeutic areas subject to certain milestone and royalty payments. For additional information, see the subsection titled “—Material agreements.”

Each year, approximately 15,500 children under the age of 18 in the United States and 300,000 globally are diagnosed with cancer. Moreover, cancer remains the most common cause of death by disease for children in the United States, accounting for over 1,700 deaths per year. Despite the need for safer and more effective therapies for childhood cancers, new drugs for pediatric patients are rare. Of the 117 non-hormonal oncology drugs approved by the FDA between 1997 and 2017, only six had an initial approval that included children. Generally, medicinal product testing in children is deferred until trials in adults reach late-stage clinical development. As a result, the first pediatric trials of an oncology product candidate usually initiate about six years after an initial clinical trial in adults.

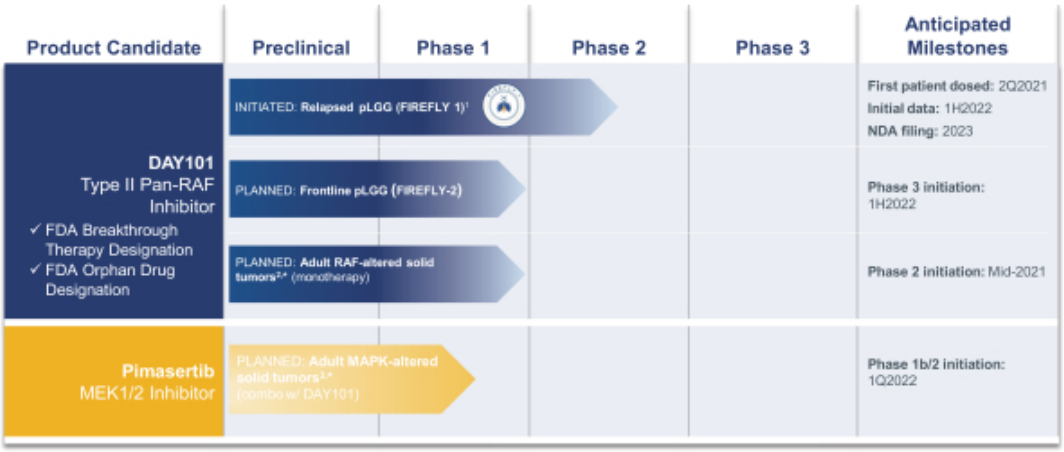
In addition, the generation of large scale molecular profiling datasets necessary to define addressable subpopulations in pediatric oncology has occurred relatively recently. Advances in our understanding of pediatric cancer biology have revealed patient populations with druggable genetic alterations. Our management team, which has significant pediatric oncology drug development experience, believes targeted therapies, such as DAY101, have the potential to be studied in children sooner in order to address the large unmet need in pediatric cancers where new agents that address the specific genetic drivers of a tumor can meaningfully improve long-term prognosis.

Our team's extensive capabilities and experience in pediatric oncology, and our relationships across all key stakeholders in the pediatric medical community enable us to effectively navigate the challenges and nuances of pediatric drug development. We understand that clinical development in children cannot and should not simply be viewed as clinical development in small adults. We leverage our unique expertise to focus our initial development efforts on pediatric patients, given the potential for favorable regulatory pathways, namely Breakthrough Therapy and Orphan Drug designations.

We are driven to help children and their families fight cancer while also addressing longstanding unmet medical needs. We believe there are a number of unique advantages to developing new oncology product candidates in pediatric patients:

- ***Enriched responder populations.*** Many pediatric tumors are less heterogeneous and genomically more stable compared to highly heterogeneous adult tumors. Genetic alterations found in pediatric tumors are often primary driver oncogenic mutations. Directly targeting these mutations may lead to deep and sustained anti-tumor activity.
- ***Ability to efficiently advance clinical development***. Global regulatory authorities have established paths for accelerated feedback on the design and execution of clinical trials in pediatrics. Furthermore, the potential to achieve proof-of-concept and regulatory approval can be obtained with relatively smaller-sized clinical trials with clear endpoints.
- ***Regulatory and commercial tailwinds.*** The scarcity of approved products or an established standard-of-care in pediatric oncology provides multiple opportunities to bring new therapeutics to market. Passionate patient advocacy groups and investigators have the potential to accelerate the uptake of therapies, if approved.

We seek to identify, acquire and develop product candidates that target high-value oncogenic drivers in cancers with high unmet need, with an initial focus on pediatric patients. The following table summarizes our product candidate pipeline.




* Includes patients [3] 12 years of age
*1 Pivotal Phase 2 trial expected to support registration*
*2 DAY101 adult monotherapy Phase 1 dose escalation and expansion trial previously completed*
*3 Pimasertib Phase 1 dose escalation and expansion trial previously completed*

Our lead product candidate, DAY101, is an oral, brain-penetrant, highly-selective type II pan-RAF kinase inhibitor that inhibits both monomeric and dimeric RAF kinase. Approved BRAF products such as vemurafenib and encorafenib are referred to as type I RAF inhibitors, which only inhibit RAF monomers and are therefore limited to use in BRAF V600-altered tumors. Unlike type I RAF inhibitors, DAY101 has not been shown to cause paradoxical activation in RAF wild-type cells at clinically active doses – a phenomenon wherein undesired increases in MAPK signaling can lead to renewed tumor growth. DAY101's inhibition of both RAF monomers and dimers broadens its potential clinical application to treat an array of RAS- or RAF-altered solid tumors. Furthermore, studies have shown DAY101 has higher brain penetration, distribution and exposure in comparison to other MAPK pathway inhibitors. Taken together, we believe that DAY101 has the potential to be an important therapeutic for pLGG, where over half of these brain tumors are driven by abnormal MAPK signaling due to RAF alterations.

This rationale served as the basis on which researchers at Dana-Farber Cancer Institute initiated the development of DAY101 in pLGG. In a Phase 1 dose-escalation study, nine pediatric patients (<18 years of age) with relapsed pLGG were treated with DAY101. Of the eight patients with RAF fusions, two achieved a complete response by Response Assessment for Neuro-Oncology, or RANO, criteria, three had a partial response, two achieved prolonged stable disease, and one experienced progressive disease as assessed by an independent radiographic review. The median time to achieve a response was 10.5 weeks, which was a notable observation given pLGG is an indolent, slow-growing tumor. In addition to the rapid anti-tumor activity observed, DAY101 was also well-tolerated, which is important for achieving and maintaining long-term, durable responses in these patients. Based on these results, DAY101 has been granted Breakthrough Therapy designation by the FDA for the treatment of pediatric patients with pLGG harboring an activating RAF alteration who require systemic therapy and who have either progressed following prior treatment or who have no satisfactory alternative treatment options. DAY101 also received Orphan Drug designation from the FDA for the treatment of malignant glioma. We have initiated a pivotal Phase 2 trial (FIREFLY-1) with DAY101 in pediatric patients with pLGG with a known activating BRAF alteration. We believe this trial is pivotal based on preliminary discussions with regulatory agencies. We expect to dose the first patient in this trial in the second quarter of 2021, to report initial data from this trial in the first half

of 2022, and to file a related NDA with the FDA in 2023. We anticipate expanding the scope of patients that can potentially be treated with DAY101 by initiating a Phase 3 clinical trial (FIREFLY-2) of DAY101 as a frontline therapy in pLGG in the first half of 2022.

In addition, we plan to initiate a Phase 2 trial of DAY101 in patients 12 years and older with RAF–altered tumors. In order to potentially drive deeper and more durable responses, we also plan to explore combinations with other agents targeting critical signaling nodes in the MAPK pathway. One such agent is pimasertib, our orally-available, highly-selective small molecule inhibitor of MEK, a protein kinase that is immediately downstream of RAF, and we expect to initiate a Phase 1b/2 trial in the first quarter of 2022 to study the combination of DAY101 and pimasertib in patients 12 years and older with various MAPK-altered tumors. Pimasertib has been studied in more than 10 Phase 1/2 clinical trials in over 850 patients with various tumor types. Several MEK inhibitors have received regulatory approval for use in combination with type I RAF inhibitors in BRAF V600 mutant tumors. Preclinical experiments indicate that the potential benefit of combining a MEK inhibitor with a type II RAF inhibitor may be even greater due to the lack of the paradoxical effects of type II inhibitors on downstream signaling. DAY101's ability to selectively inhibit both RAF monomers and dimers may broaden its potential clinical application in combination with MEK inhibition in solid tumors driven by RAS alterations, non-BRAF V600 mutations, and RAF fusions.

We have assembled a leadership team with a proven track record of success in building biopharmaceutical companies, and a team of drug developers with unique experience and capabilities in pediatric drug development. Our Chief Executive Officer, Jeremy Bender, Ph.D., M.B.A., brings more than 15 years of biopharmaceutical leadership experience to the company. He previously served as Vice President of Corporate Development at Gilead Sciences where he led the team responsible for Gilead's acquisitions, partnerships, and equity investments and oversaw more than 40 transactions exceeding $10 billion in upfront deal value, including the acquisition of Forty Seven, Inc. Samuel Blackman, MD, PhD, our co-founder and Chief Medical Officer is a physician-scientist trained in pediatric hematology/oncology and neuro-oncology, and has led the early clinical development of more than ten novel cancer therapeutics and was responsible for the pediatric development of dabrafenib, resulting in the first industry-sponsored pediatric oncology "basket trial." Charles York II, our Chief Operating and Financial Officer, previously served as Chief Financial Officer and head of corporate development at Aeglea BioTherapeutics, and as Consulting CFO at Bridgeport Consulting, and has more than 20 years of strategic capital formation and leadership experience. Lisa Bowers, our Chief Commercial Officer, previously had pivotal roles in managing several national market access functions including serving as VP of the North American Supply Chain at Genentech and managing its $400 million cystic fibrosis franchise and its $20 billion North American drug supply chain, and served as CEO of Rhia Ventures and COO of the Tara Health Foundation. Davy Chiodin, PharmD, our Chief Development Officer has over 15 years of experience in both adult and pediatric oncology drug development including the development of acalabrutinib at Acerta, now AstraZeneca, and served as Global Regulatory Leader, Pediatric Oncology, at Roche/Genentech. Mike Preigh, PhD, our Chief of Technology Operations, has over 25 years of experience in product development including serving as the Head of CMC at Array for over 10 years, filing over 20 Investigational New Drug Applications, or INDs, and supporting the development of marketed drugs including binimetinib and tucatinib.

We are supported by our board of directors, scientific advisors and a leading syndicate of investors, which includes Access Biotechnology, Atlas Venture, Boxer Capital, BVF Partners L.P., Canaan, Franklin Templeton, Janus Henderson Investors, Perceptive Advisors, RA Capital Management, funds and accounts advised by T. Rowe Price Associates, Inc., and Viking Global Investors.

## Our strategy

We have a mission-driven strategy to build a differentiated, global biopharmaceutical company through the identification, development and commercialization of therapeutics that address underserved patient populations, with an initial focus on pediatric patients. The key elements of our strategy are to:

- **Establish a leadership position in targeted oncology therapeutics for patients of all ages through our unique expertise in pediatrics.** We have built a targeted oncology company with differentiated business and clinical development capabilities. We leverage these capabilities to navigate the unique challenges and nuances of pediatric drug development. We initially focus on pediatric patients as we believe this provides a favorable pathway to approval for our product candidates. We have established trusted relationships with the pediatric oncology community, and we seek their advice on aligning our clinical development plans with the needs of the patients and their families. We believe we are a leader in this development space and to further this position, we plan to continue to consult and strategically partner with biopharmaceutical companies, academic pediatric oncologists and scientists, and patient advocacy groups to identify areas of unmet need in pediatric oncology and then acquire high-impact assets to address these underserved patients.
- **Advance our lead product candidate, DAY101, through clinical development towards regulatory approval in pLGG.** We have demonstrated clinical proof-of-concept of DAY101 in pediatric patients for cancers that harbor genetic alterations in RAF. Oral, once-weekly dosed DAY101 was also well-tolerated in the Phase 1 trial in pLGG, which is important for achieving and maintaining long-term, durable responses in these patients. Further, DAY101 received FDA Breakthrough Therapy designation for the treatment of pediatric patients with pLGG harboring an activating RAF alteration who require systemic therapy and who have either progressed following prior treatment or who have no satisfactory alternative treatment options. DAY101 also received Orphan Drug designation from the FDA for the treatment of malignant glioma. We are currently conducting a pivotal Phase 2 trial (FIREFLY-1) with DAY101 in relapsed and progressive pLGG and expect to dose the first patient in the second quarter of 2021 and to report initial data in the first half of 2022. We anticipate expanding the scope of patients that can potentially benefit from DAY101 by initiating a Phase 3 clinical trial (FIREFLY-2) evaluating DAY101 as first-line therapy in pLGG in the first half of 2022.
- **Maximize the therapeutic potential for DAY101 by targeting other tumors with various unaddressed MAPK alterations, including in adults, both as a monotherapy and in combination with our second product candidate, pimasertib.** DAY101 has been dosed in over 250 patients in two Phase 1 open-label clinical trials—one trial investigating DAY101 in monotherapy, and another in combination with other anti-cancer drugs. In both clinical trials, signs of early clinical responses emerged. Additionally, simultaneous inhibition of both RAF and MEK has been shown to lead to synergistic anti-tumor activity. We are currently planning to initiate a Phase 1b/2 master protocol with DAY101 in relapsed/refractory adult solid tumors with confirmed MAPK signaling pathway alterations with a Phase 2 monotherapy trial in mid-2021 and a Phase 1b/2 trial in combination with pimasertib in the first quarter of 2022.
- **Deploy our differentiated and proven business development expertise to further expand our targeted oncology pipeline for patients with large unmet medical needs.** Our team has diverse backgrounds—from academia and drug research and development, to biopharmaceutical industry and business development experience. We have a proven track record of identifying and acquiring drug candidates and programs with potentially significant commercial opportunities, including successfully in-licensing our current drug candidates, DAY101 from Takeda and pimasertib from Merck KGaA, Darmstadt, Germany. We will utilize our broad experience, as well as our network of trusted relationships, to source additional high-impact assets to further expand our targeted oncology pipeline.

- **Evaluate opportunities to accelerate development timelines and enhance the commercial potential of our programs in collaboration with third parties.** We own full worldwide development and commercialization rights to each of our programs subject to milestone and certain royalty payments. For additional information, see the subsection titled "—Material agreements." In the future, we may selectively enter into collaborations where we believe there is an opportunity to accelerate the development and commercialization of our product candidates. We intend to commercialize our product candidates in key markets either alone or with partners in order to maximize the worldwide commercial potential of our programs.

## Our approach: prioritize pediatric cancer and other areas of high unmet need

Our company is focused on prioritizing the clinical development of novel targeted therapeutics in pediatric patients. Historically, most pharmaceutical companies focused discovery and development efforts for new cancer therapies on adult tumor types. As a result, between 1997 and 2017, for the 126 drugs that received initial FDA approval for an oncology indication, the median time between the first-in-adult trial and the first-in-child trial was 6.5 years, regardless of whether or not the drug was a chemotherapeutic, a biologic agent, or a targeted therapeutic.

We believe that now is the right time to revisit and correct historic assumptions about pediatric oncology drug development. In doing so, we believe there are unique advantages to developing new oncology product candidates in pediatric patients, in parallel with, or even in advance of, adult indications:

- ***Enriched responder populations.*** The generation of large scale molecular profiling datasets necessary to define addressable subpopulations in pediatric oncology has accelerated over the last decade. This has allowed scientists and drug developers to identify oncogenic drivers underlying numerous pediatric tumor types, and has revealed druggable oncogenic drivers in nearly 50% of pediatric cancers. Moreover, pediatric tumors are less heterogeneous and genomically more stable compared to highly heterogeneous adult tumors. Directly targeting these mutations may lead to deep and sustained anti-tumor activity, as demonstrated by other targeted oncology products.
- ***Ability to efficiently advance clinical development***. Recently, global regulatory authorities have established paths for accelerated feedback on the design and execution of clinical trials in pediatrics. As part of the recent FDA Reauthorization Act, 205 relevant molecular targets were identified for pediatric cancers. In addition, new tumor-specific pediatric oncology consortia and cooperative groups have been established, allowing industry to sponsor pediatric clinical trials in the same manner as adult clinical trials. Further, the potential to achieve proof-of-concept and regulatory approval can be obtained with relatively smaller-sized clinical trials with clear endpoints.
- ***Regulatory and commercial tailwinds.*** Of the 117 non-hormonal oncology drugs approved by the FDA between 1997 and 2017, only six had an initial approval that included children. The scarcity of approved products or an established standard of care, particularly in relapsed disease in pediatric oncology, provides multiple opportunities to bring new therapeutics to market. Passionate patient advocacy groups and investigators have the potential to accelerate the uptake of therapies, if approved.

Our company is uniquely positioned to deliver much-needed targeted therapeutics to pediatric oncology patients. We have extensive capabilities and experience with these patients, and our trusted relationships across all key stakeholders in the pediatric medical community enable us to effectively navigate the challenges and nuances of pediatric drug development. Key advantages that allow us to successfully identify and execute on opportunities in pediatric oncology include:

- ***Aggregation of insights from a diverse group of key stakeholders to identify attractive development opportunities based on patient need and underlying biology.*** The broad scientific expertise of our team and within our trusted global network of scientific advisors, allows us to focus and identify areas of cancer

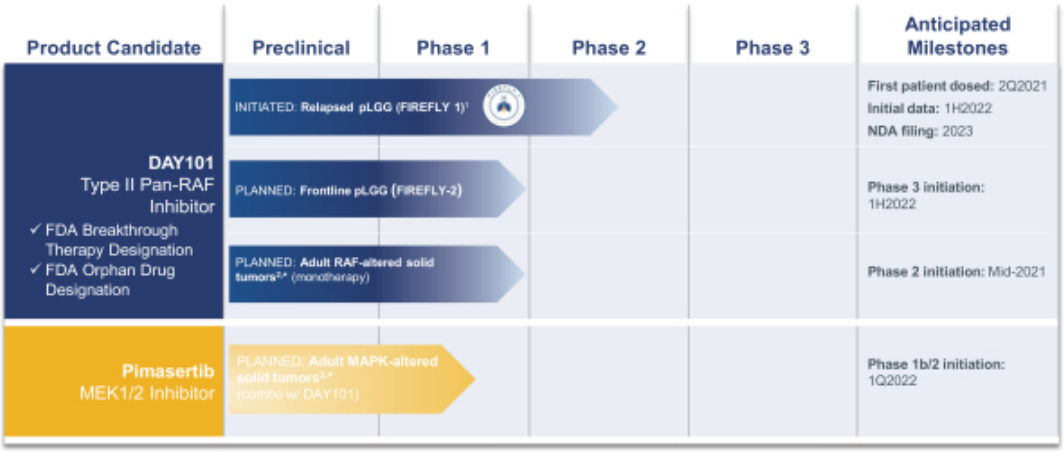
biology that are relevant to children, adolescents and adults. For instance, the BRAF wild-type gene fusions that are the most common BRAF alteration in pLGG have been shown to be oncogenic in several adult solid tumor types, and may be addressable with DAY101 as monotherapy, or in combination with a MEK inhibitor, such as pimasertib.

- ***Business development opportunities enabled by key relationships and a dedication to prioritize pediatric drug development.*** We believe we are routinely among the first to evaluate emerging clinical and preclinical data that could underlie new drug development programs in pediatric oncology indications as a result of our deep roots and extensive network within the pediatric oncology research community. For example, we were made aware of the opportunity to out-license DAY101 from Takeda, and were able to rapidly gain insights into the emerging data due to our relationships within the pediatric oncology investigational medicine community including but not limited to the ACCELERATE consortium participants, the Dana Farber Cancer Institute, and the Pacific Pediatric Neuro-Oncology Consortium, or PNOC.
- ***Organizational focus on overcoming the historical challenges to executing pediatric clinical trials.*** We understand that clinical development in children is unique and must be approached as such. Clinical development in children is not the same as clinical development in adults and requires a deep organizational focus to address the needs of families, pediatric investigators, patient advocacy communities, and the patients. We have established trusted relationships with the pediatric oncology community globally, including major cooperative groups and disease-specific consortia, and we seek their advice on aligning our clinical development plans with the needs of the patients and their families. Our team is deeply experienced in designing modern, novel, and capital-efficient clinical development plans, as well as in obtaining early regulatory alignment on those plans—similar to an ultra-rare disease model. For example, as a result of the lack of any standard-of-care or approved therapies for pLGG patients, we believe that our pivotal Phase 2 trial is expected to provide a sufficient dataset to support approval with only 60 patients based on preliminary discussions with regulatory agencies.

These capabilities will enable us to develop targeted therapeutics from which pediatric patients can benefit. We believe we are a leader in this development space and to further this position, we plan to continue to consult and strategically partner with biopharmaceutical companies, academic pediatric oncologists and scientists, and patient advocacy groups to identify areas of unmet need in pediatric oncology and then acquire high-impact assets to address these underserved patients. While our initial focus is on pediatric patients, we also pursue the clinical development of targeted therapies with equivalent intensity for adult populations.

## Our product candidates

We seek to identify, acquire and develop product candidates that target high-value oncogenic drivers in cancers with high unmet need, with an initial focus on pediatric patients. Although our clinical development begins by leveraging our unique expertise in the pediatric oncology setting, we are committed to advancing targeted therapies for adult cancer patients with equivalent intensity. The following table summarizes our product candidate pipeline.




* Includes patients [3] 12 years of age
1 *Pivotal Phase 2 trial expected to support registration*
2 *DAY101 adult monotherapy Phase 1 dose escalation and expansion trial previously completed*
3 *Pimasertib Phase 1 dose escalation and expansion trial previously completed*

## DAY101

Our lead product candidate, DAY101, is an oral, brain-penetrant, highly-selective type II pan-RAF kinase inhibitor. DAY101 has been studied in over 250 patients, and as a monotherapy demonstrated good tolerability and encouraging anti-tumor activity in pediatric and adult populations with specific MAPK pathway-alterations. We have initiated a pivotal Phase 2 trial (FIREFLY-1) of DAY101 for pediatric patients with pLGG, the most common brain tumor diagnosed in children, for which there are no approved therapies or standard of care, and we expect to dose the first patient in this trial in the second quarter of 2021, to report initial data from this trial in the first half of 2022, and to file a related NDA with the FDA in 2023. We believe this trial is pivotal based on preliminary discussions with regulatory agencies. DAY101 has been granted Breakthrough Therapy designation by the FDA for the treatment of pLGG based on initial results from a Phase 1 trial which showed evidence of rapid anti-tumor activity and durable responses in pLGG patients. We also plan to study DAY101 alone or in combination with other agents that target key signaling nodes in the MAPK pathway in patient populations where various RAS and RAF alterations are believed to play an important role in driving disease.

### *RAF kinase drives cell proliferation and carcinogenesis*

Cell functions such as growth, survival and differentiation are regulated by cascades of signaling events of which RAF kinase is a critical component. RAF is a protein kinase that is normally activated by RAS, a protein that transmits activating signals from extracellular receptors to RAF. Activation of RAF then leads to the activation of MEK kinase and the downstream MAPK pathway. Genetic alterations that result in overactivation of the pathway, such as RAS or RAF alterations, have long been characterized as oncogenic.

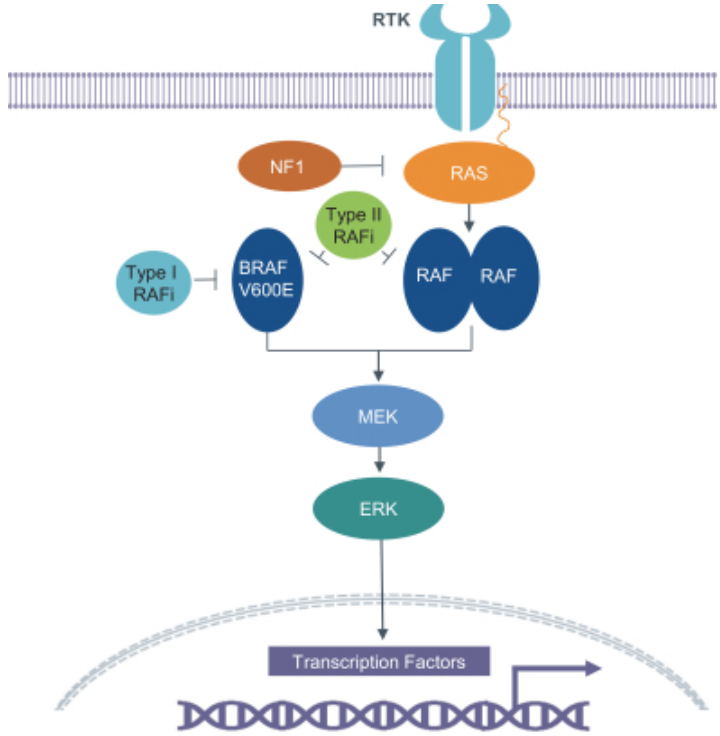



Figure 1. RAF kinases (ARAF, BRAF, CRAF) are critical components of the MAPK pathway. BRAF V600E can signal as a monomer and is sensitive to type I and type II RAF inhibitors. Wild-type RAF dimers are only sensitive to type II RAF inhibitors. Modified from: Solit and Rosen, Cancer Discover, 2014.

One of the most frequently altered genes in this pathway is BRAF, one of three RAF genes in human cells and the form of RAF most easily activated by RAS. The majority of alterations in BRAF are mutations known as V600. Mutations in V600 transform non-mutant or wild-type BRAF into a form of BRAF that has increased signaling activity and is no longer dependent on RAS for activation. The abundance of V600 mutant BRAF and its central role in tumor growth have made it a focus of historical drug discovery efforts.

Another class of important oncogenic BRAF alterations are BRAF wild-type gene fusions. Gene fusions involving BRAF occur through intra- or inter-chromosomal rearrangements in which genes for unrelated proteins are physically joined together resulting in the synthesis of a chimeric protein. BRAF consists of a regulatory domain which modulates the activity of BRAF, and a catalytic kinase domain which then activates downstream signaling to promote cell growth. In BRAF fusions, the regulatory domain of BRAF is replaced with a different sequence, allowing BRAF to signal independent of RAS activation. This uncoupling of the regulatory and catalytic domains of BRAF has important consequences: the resultant novel oncogene is both aberrantly expressed and it also exhibits constitutive, or always-on, activation of the kinase domain. This kinase activity can result in the activation of downstream oncogenic signaling, exacerbating tumor growth. BRAF gene fusions have been observed in patients with prostate cancer, melanoma, radiation-induced thyroid cancer, and pLGG. While BRAF gene fusions are less common than BRAF V600 mutations in adult solid tumors, when the fusions are present, they are likely to be a unique oncogenic driver. In pLGG, BRAF wild-type fusions are the most common genomic alteration and oncogenic driver. As such, we believe there is strong rationale for treating patients with these gene fusions, especially in pLGG patients, with a targeted therapeutic.

Three BRAF inhibitors have been approved by the FDA for the treatment of certain solid tumors containing only BRAF V600E or V600K mutations, including melanoma, non-small cell lung cancer, anaplastic thyroid cancer, and colorectal cancer. These first-generation BRAF inhibitors, known more generally as type I RAF inhibitors, are vemurafenib, marketed as Zelboraf by Genentech; dabrafenib, marketed as Tafinlar by Novartis; and encorafenib, marketed as Braftovi by Pfizer. However, despite initial clinical responses, most patients relapse within one year due to drug resistance.

One way by which resistance develops to type I RAF inhibitors is related to the mechanism of normal RAF activation in cells. In contrast to the constitutively active V600E or V600K variant, which is active as a monomer, normal RAF function requires formation of dimers of RAF. Approved inhibitors of V600E/K BRAF do not block the activity of RAF dimers or other non-V600 BRAF mutations. In fact, the binding of some of these inhibitors to V600E/K BRAF can stimulate the formation of dimers, thereby causing paradoxical activation (undesired increases in MAP kinase signaling) in RAF wild-type cells – a phenomenon which could potentially lead to renewed tumor growth. Paradoxical activation of wild-type RAF also occurs in non-tumor tissue. This leads to a common adverse event associated with these agents—the development of proliferative pre-malignant and malignant skin lesions. In order to avoid resistance and paradoxical activation, in many instances type I RAF inhibitors need to be given in combination with MEK inhibitors.

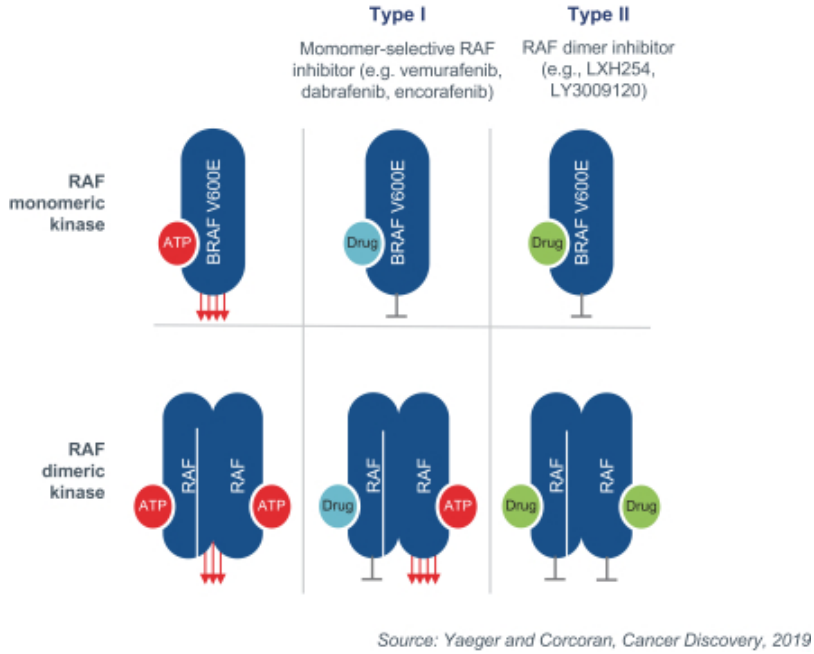



Figure 2. Schema showing the effect of different RAF inhibitors on monomeric RAF kinases (i.e., BRAF V600E; top section) or dimeric RAF kinases (bottom section). ERK activation is strongly activated downstream of BRAF V600E, even more so than seen for dimeric RAF kinase signaling. Monomer-selective type I RAF inhibitors bind to the ATP site in BRAF monomers and inhibit downstream signaling. In RAF dimeric kinases, binding of drug inhibits the bound RAF protomer, but leads to a conformational change in the other protomer in the dimer pair and strong transactivation of this protomer, leading to overall increased ERK activation (paradoxical activation). Type II RAF inhibitors are able to bind to mutant RAF monomers and dimers at equipotent doses and therefore can inhibit mutant RAF monomers and dimers at the same dose. Adapted from Yaeger and Corcoran, Cancer Discovery, 2019.

Type I RAF inhibitors that target V600E/K alterations are not able to inhibit the wild-type RAF kinase domains in KIAA1549-BRAF gene fusions and are thus unable to effectively inhibit the overactive signaling that results from this fusion. Furthermore, because of the potential for paradoxical activation, these RAF inhibitors are contraindicated in patients with BRAF gene fusions.

***DAY101's mechanism of action***

DAY101 is a selective, small molecule RAF inhibitor that can block the activity of multiple forms of RAF including wild-type RAF, BRAF and CRAF fusion proteins, and variants that function as dimers (Class II mutations), as well as variants such as BRAF V600E and non-V600E mutations that function as monomers (Class I mutations). DAY101 is known as a type II RAF inhibitor as it's designed to inhibit both monomeric and dimeric RAF kinase. DAY101's inhibition of both RAF monomers and dimers broadens its potential clinical application to treat an array of RAF-altered tumors.

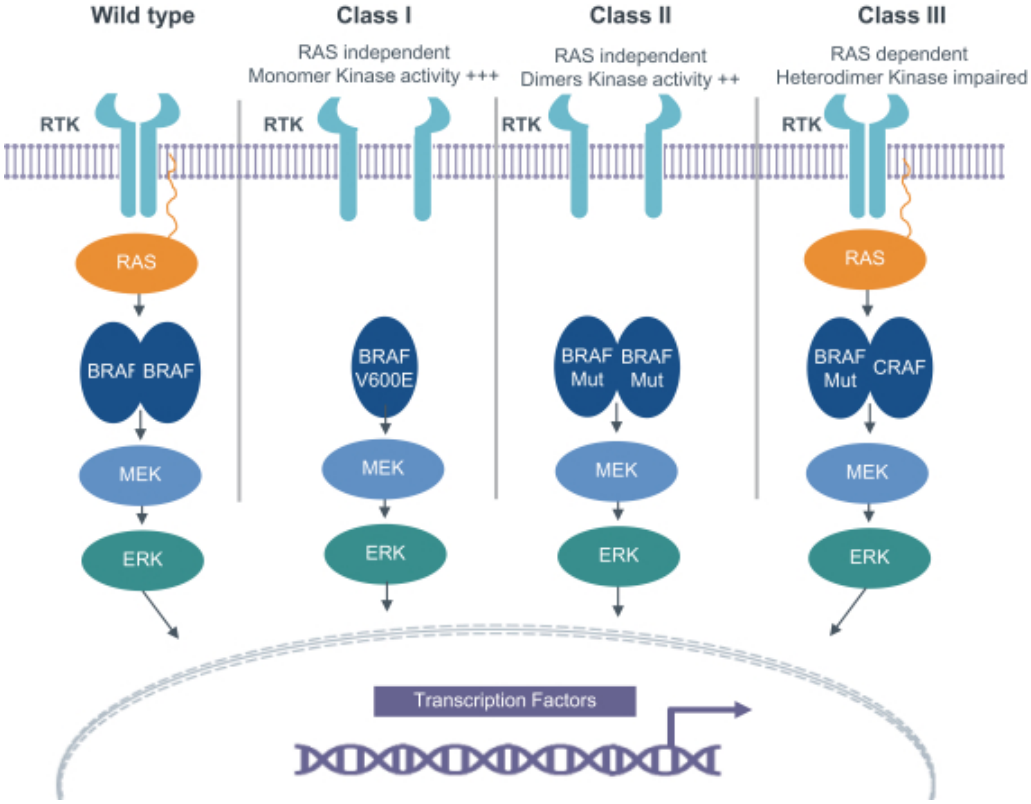



Figure 3. Signaling pathways in different classes of BRAF mutations. BRAF V600 mutations (Class I) are independent of RAS signaling and work as monomers. BRAF non-V600 Class II mutants are also independent of RAS but signal as constitutive dimers. The Class II mutations include BRAF wild-type fusions. Non-V600 Class III BRAF mutations have low or no kinase activity and depend on RAS activation acting as amplifiers of the RAS signaling pathway. DAY101 inhibits Class I and Class II RAF alterations, including BRAF wild-type fusions and non V600E/K variations. Modified from Fontana and Valeri, Clinical Cancer Research, 2019.

***Pediatric low-grade glioma disease and treatment overview***

Pediatric low-grade glioma is the most common brain tumor diagnosed in children, accounting for 30%-50% of all central nervous system tumors. For the most part, these tumors are slow-growing, chronic, and relentless. While malignant transformation and dissemination of pLGGs are rare there are many long-term consequences of the disease. The growth of pLGG is highly morbid as pLGG tumors are space-occupying lesions that have the potential to compress critical neurovascular structures in the brain. Symptoms can vary from patient to patient depending on the location of the tumor and the amount of pressure it exerts on surrounding tissues. These symptoms can include headaches, nausea, vomiting, lethargy, sixth cranial nerve palsies, seizures and behavioral changes, depending on tumor location. The majority of children with pLGG are long-term survivors and live into adulthood; however, survivors of pediatric glioma often suffer long-lasting functional, neurologic, and endocrine complications from their disease and/or treatment. These patients require more effective treatment strategies that minimize long-term morbidity and treatment-associated toxicity.

Patients with pLGG have historically been treated with surgery, radiation, and chemotherapy. While surgical resection of pLGG is associated with 10-year overall survival rates of 90% or more, the majority of children are unable to undergo complete resection, a procedure which can be associated in some instances with significant and long-lasting morbidity. Incompletely resected or unresectable pLGG is associated with a high rate of disease progression or recurrence. Patients with subtotal resections have a 10-year progression-free survival of only 55%. Although more modern radiation therapy modalities have been shown to lead to improvements in progression free survival, radiotherapy is historically associated with a risk of significant decline in neurocognitive outcomes in younger children, as well as the risk of endocrine dysfunction, secondary malignancy, and an increased risk of stroke. As a result, even modern radiation therapy techniques continue to be reserved for use when all other therapies have failed.

Most patients with progressive pLGG are treated with combination chemotherapy such carboplatin/vincristine or thioguanine, procarbazine, lomustine, and vincristine, a combination referred to as TPCV. Results from the largest randomized Phase 3 study for children with newly diagnosed pLGG showed a 5-year event-free survival of 47% for vincristine/carboplatin. Outcomes for a subgroup of pLGG patients not associated with neurofibromatosis, which included those with BRAF alterations, were inferior, showing a 5-year event-free survival of 39%. Of note, the overall response rate to chemotherapy in newly diagnosed pLGG patients was 30%-35%. In addition to chemotherapy’s efficacy limitations, treatment-related morbidity was significant, with more than 95% of patients having experienced at least one Grade 3 or Grade 4 adverse event. There is no standard-of-care therapy for patients whose tumors progress following the failure of these combinations, and no targeted therapeutics have been approved for this patient population.

Current pLGG Treatment Paradigm in the US


Figure 4. Treatment paradigm for pLGG.

Because many pLGGs undergo senescence when patients reach their 20s, the goal of therapy is to maximize tumor control while minimizing treatment-associated toxicities from surgery, chemotherapy, and radiation. As a result, a large number of pLGG patients will undergo multiple lines of systemic therapy over the course of their disease.

Based on incidence results published in academic journals, we estimate that approximately 1,100 patients under the age of 25 are diagnosed with BRAF-mutated pLGG every year. We estimate that the SEER prevalence in the United States for patients under the age of 25 as of January 1, 2017 was approximately 130,000 patients presenting brain and other nervous system tumors, of which 26,000 presented BRAF-mutated pLGG.

Over the last decade, it has been found that between 50% and 60% of pLGGs are driven by abnormal signaling due to alterations in RAF, approximately 85% to 90% of which are a gene fusion known as KIAA1549-BRAF. This gene alteration results in the expression of a wild-type BRAF catalytic domain without its normal regulatory domain, thereby rendering constitutively active BRAF activity. In addition, between 5% and 17% of children with pLGGs have tumors with a BRAF V600E activating mutation. No targeted therapeutics have been approved for the treatment of pLGG, and there are currently no therapies approved for pediatric patients with RAF alterations—the largest subset of patients with pLGG.

Indirect targeting of KIAA1549-BRAF gene alterations is possible with the off-label use of approved drugs that target components of the downstream RAF signaling pathway, such as with therapies that target MEK, and targeting of BRAF V600E mutations is possible with the off-label use of type I RAF inhibitors that have been approved for adult indications such as melanoma. An investigator-sponsored clinical trials of the MEK inhibitor selumetinib has recently been published. This study included 25 patients with either a KIAA1549-BRAF fusion or a BRAF V600E mutation. Nine of 25 patients achieved a sustained partial response. 16% of patients had Grade 3 elevation on creatine phosphokinase, and 8% of patients had Grade 3 acneiform rash. Ten of 25 patients (40%) required a dose reduction due to treatment-related adverse events and one (4%) required two dose reductions. Similarly, a retrospective analysis of the MEK inhibitor trametinib in 18 patients was recently published, showing 6 partial responses, 2 minor responses, and 10 stable diseases as best overall responses. Treatment-related adverse events occurred in 89% of patients, including 44% with severe (Grade 3 or Grade 4) adverse events, which required dose reduction in 33% of patients and discontinuation in 11% of patients. Finally, an industry-sponsored Phase 1/2a study of dabrafenib in 32 pLGG patients with BRAF V600E mutations was recently published, showing a confirmed objective response rate, or ORR, of 44%, which included 1 complete response and 13 partial responses, with a median duration of response of 26 months. Grade 3 or 4 treatment-related adverse events were reported in 28% of patients, and included new or increased size of melanocytic nevi in 25% of patients but no cases of squamous cell carcinoma. Ten patients (31%) had adverse events that led to dose interruptions or reductions, and 6% of patients had adverse events that led to treatment discontinuation.

Taken together, these investigations have shown some of the existing MEK and type I RAF inhibitors have been shown, in small trials, to have activity in pLGG, but are accompanied by frequent Grade 3 or Grade 4 adverse events, and the need for dose reduction or interruption. Importantly, none of these agents have been approved for use in this population and as such, are only available via clinical trials or off-label prescription. Off-label use, while common in the pediatric oncology setting, is recognized to be an inferior approach as it exposes children to potential risks without the associated safeguards that accompany comprehensive clinical development activities, such as long-term safety monitoring and pharmacovigilance activities. We believe that the intentional development of a specifically-targeted, brain-penetrant therapy for pLGG is essential to improve outcomes for these patients.

***Pre-clinical studies***

In pLGG models driven by KIAA1549-BRAF fusions, type I RAF inhibitors have been shown both to result in paradoxical activation and accelerate the growth of tumors and as a result are not recommended for patients with tumors bearing a BRAF wild-type fusion or duplication. Evidence for paradoxical activation comes from observations of proteins downstream of BRAF. One of these proteins is ERK, a MAP kinase pathway component implicated in tumor growth. ERK is activated by addition of a phosphate group, forming phosphor-ERK, or pERK. Treatment of cells containing BRAF V600E with either vemurafenib, a type I RAF inhibitor, or DAY101, a type II RAF inhibitor, resulted in a reduction in the level of pERK. However, in cells treated with vemurafenib there was a rebound in the level of pERK within 24 hours that was not seen with DAY101. *In vitro* studies demonstrated that DAY101 was effective inhibiting pERK in cells containing a KIAA1549-BRAF fusion, cells in which vemurafenib was ineffective, confirming the ability of DAY101 to inhibit BRAF wild-type fusion proteins.

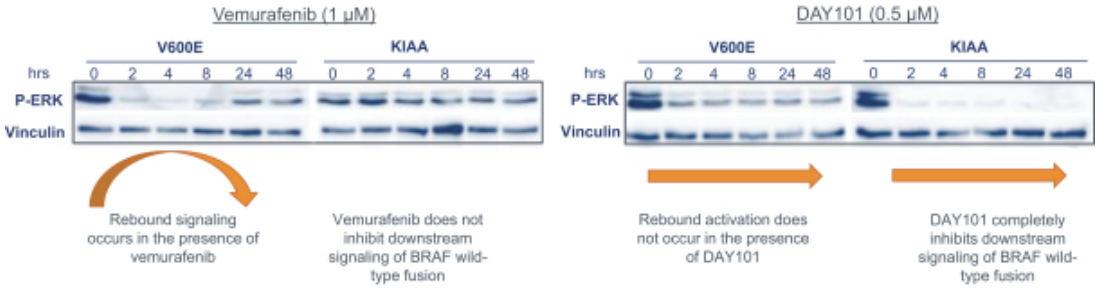



Figure 5. DAY101 inhibited both V600E and KIAA BRAF fusions as seen by the reduction in activated ERK (pERK) compared to vinculin control. Vemurafenib did not inhibit KIAA1549-BRAF fusions. DAY101 did not lead to paradoxical activation of ERK, as seen within 24 hours after inhibition of V600E BRAF with vemurafenib.

In addition to its ability to inhibit the two main oncogenic drivers in pLGG, DAY101 has been shown to have high brain distribution and exposure in comparison to other MAPK pathway inhibitors. In pre-clinical studies, total exposure of DAY101 in mouse brain was 20% of that found in plasma, which was at least 10-fold greater than data reported for vemurafenib and dabrafenib. In addition, the use of a novel imaging technique called MALDI-MSI allowed for the localization of DAY101 distribution in tissue sections of whole mouse brain (with an intact blood-brain-barrier) as well as localization of DAY101 within a brain tumor resulting from implanted KIAA1549-BRAF fusion driven cells. As indicated in Figure 6, DAY101 crossed the blood-brain barrier and was distributed widely through the brain, in comparison to the type I RAF inhibitor dabrafenib, which has poor blood-brain penetrance. Orally-administered DAY101, in this model, was able to penetrate brain tumor tissue, as indicated in Figure 6A, and inhibited pERK, as shown in Figure 6B and 6C. The improved ability of DAY101 to cross the blood-brain barrier and enter the central nervous system and brain tumor tissue positions it as a potential therapy for the treatment of brain tumors.

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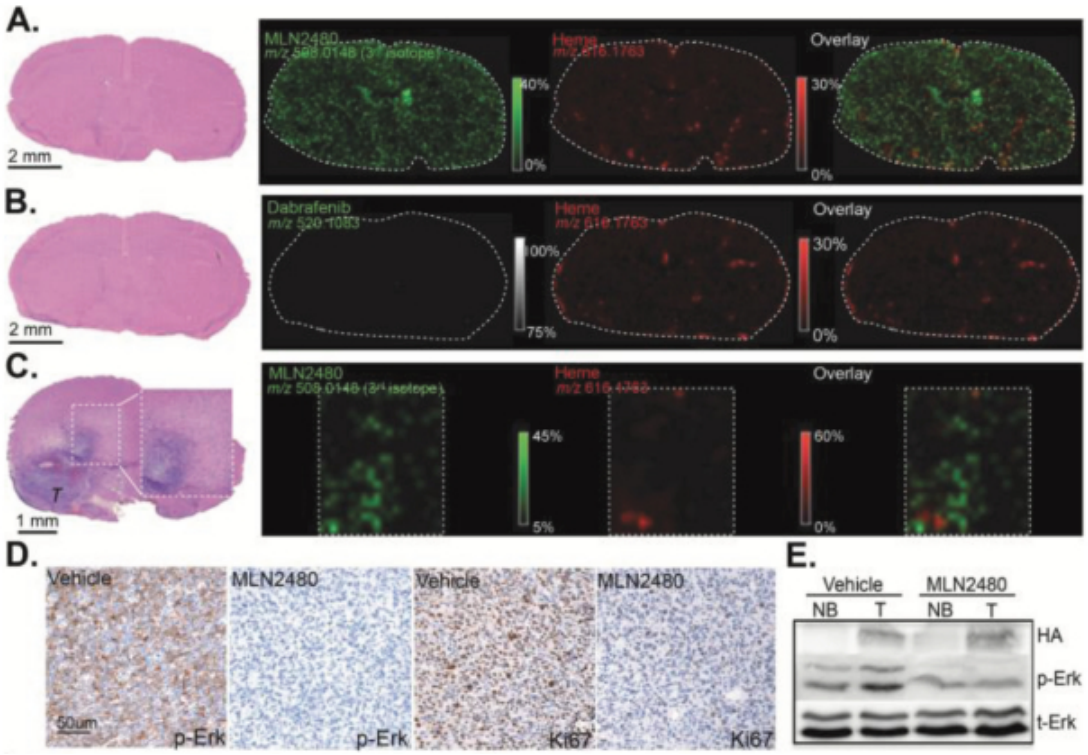


Figure 6. DAY101 (formerly known as MLN2480) can cross the blood-brain barrier and inhibit pERK in KIAA1549-BRAF brain tumors. Intact normal mouse brain showed the distribution of DAY101 (A) and relative to blood (heme), the lack of distribution of dabrafenib in the same model (B), and the distribution of DAY101 in a KIAA1549-BRAF tumor implanted within a mouse brain (C). Treatment with DAY101 resulted in a decrease in MAPK activation as indicated by a decrease in pERK measured by immunohistochemistry (D) and immunoblot (E).

DAY101 has demonstrated anti-tumor activity in multiple tumor models. As shown in Figure 7 below, DAY101 treatment of mice with implanted brain tumors driven by BRAF V600E or the KIAA1549-BRAF wild-type fusion tumors resulted in significant improvement in overall survival.

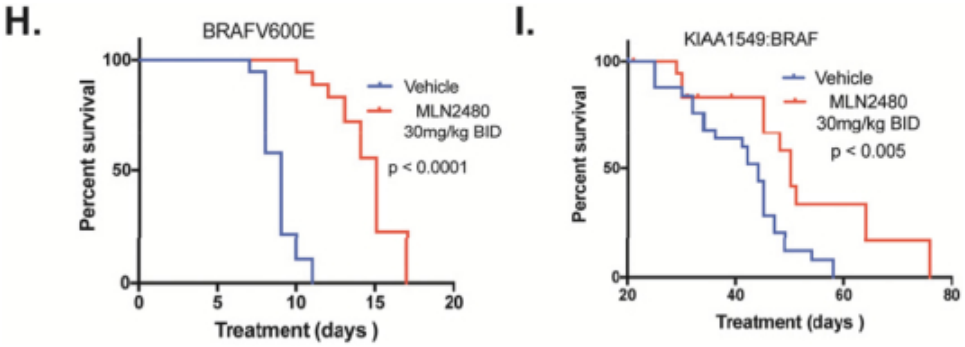


Figure 7. DAY101 (formerly known as MLN2480) treatment increased survival in orthotopic models containing V600E or KIAA BRAF altered neuronal cells.

***Clinical trial results for pLGG***

DAY101 is currently being evaluated in an ongoing investigator-initiated, multi-center study (PNOC014, NCT03429803) in patients with relapsed/refractory pLGG that is being conducted by Dana Farber Cancer Institute in collaboration with PNOC. As of January 2020, nine patients had been enrolled in the Phase 1 dose-escalation portion of this trial, which has been conducted at the Dana Farber Cancer Institute. Two additional pediatric patients with relapsed/refractory pLGG have been treated on a compassionate-use basis. This trial was amended and restarted after Day One acquired the program, with accrual resuming in June 2020, and an additional 16 patients have been enrolled since that time.

As shown in Figure 8 below, the Phase 1 trial, which initially started in February 2018, was designed to determine maximum tolerated dose, or MTD, in pediatric patients. Part A of this trial was an initial dose-escalation of DAY101 as monotherapy that utilized a 3+3 design. The starting dose of 280 mg/m$^2$ was 80% of the adult recommended phase 2 dose, or RP2D, of 600 mg orally once weekly, adjusted for body surface area. Patients enrolled in this trial were treated for a period of up to two years. The trial was amended December 2019 to continue dose escalation, using an adaptive design, until either dose limiting toxicities, or DLTs, or the MTD was observed.

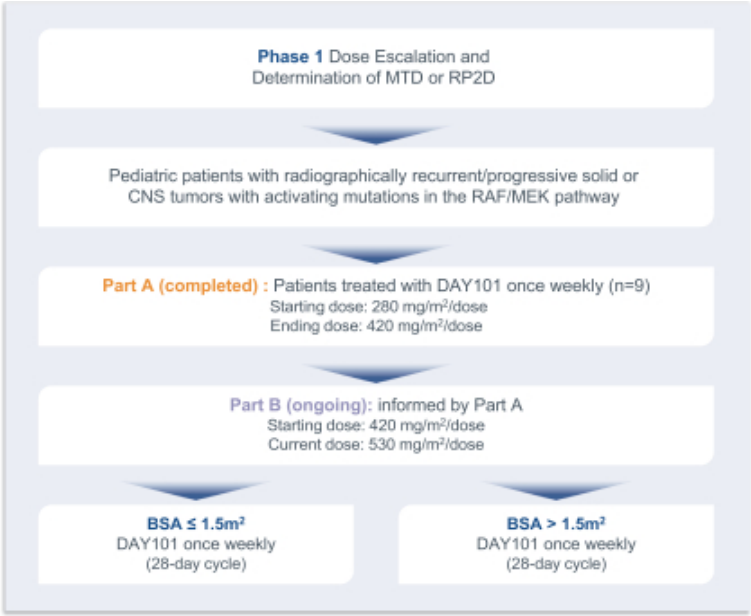


Figure 8. Design of the Phase 1 trial of DAY101 in pLGG.

DAY101 was administered once weekly as oral immediate release tablets. As of January 2020, nine patients had been evaluated in Part A across three different dose levels: 280 mg/m$^2$, 350 mg/m$^2$, and 420 mg/m$^2$, with three patients at each dose level. DAY101 was well tolerated at all doses tested with no dose reductions or interruptions in patients receiving doses of 420 mg/m$^2$ or below. None of these patients experienced a DLT. The vast majority of treatment emergent adverse events, or TEAEs, were Grade 1 or 2. No ophthalmologic or cardiac adverse events were observed. There were no cases of squamous cell carcinoma or keratoacanthoma. Acneiform rash was observed in six of nine patients, but all instances were Grade 2 or less. The most frequently reported TEAEs across all dose cohorts in Part A were all Grade 1 or 2 in serverity and included rash (89%), graying of the hair (achromotrichia) (78%), moles (nevus) (78%), anemia (67%), and itching (pruritis) (67%).

One patient experienced a single Grade 3 adverse event (increased creatinine phosphokinase), and there were no Grade 4 adverse events reported. These side effects were found to be reversible and manageable.

While 420 mg/m$^2$ was initially considered the RP2D because of anti-tumor activity observed at all dose levels in Part A, dose escalation was continued in an attempt to determine a MTD. Upon resumption of the dose-escalation portion in Part B of this trial, the dose escalation was split between two subgroups, based on body surface area, to account for the possibility that at dose levels of 530mg/m$^2$ or higher there might be larger children that may exceed the adult MTD at a given dose level, while smaller children may not. The 420 mg/m2 dose level was confirmed to be well-tolerated in an additional six patients. DAY101 is currently being evaluated in Part B at 530 mg/m$^2$. As of February 18, 2021, the MTD has still not been reached. Two DLTs have been reported—Grade 3 fatigue for more than five days, was observed in a patient receiving 530mg/m$^2$ in Stratum 1, and Grade 3 rash lasting more than seven days was observed in a patient receiving 530mg/m$^2$ in Stratum 2.

Data from the now-completed Part A, where the patients received up to two years of continuous treatment, supported by data from Part B, indicate that the tolerability profile of DAY101 at 420mg/m$^2$ supports the potential for chronic long-term usage of DAY101.

A standard objective measure of efficacy accepted by the FDA for brain tumors is a set of radiographic measurement criteria called RANO. RANO criteria take into account various measures of tumor dimensions to track response to therapy or disease progression. Data from patients in Part A of PNOC014 were reviewed by an independent neuro-radiologist using RANO criteria. Eight of the nine patients had a pLGG with a RAF fusion (7 with a KIAA1549-BRAF fusion and one with an SRGAP3-CRAF fusion), while one patient had a loss-of-function mutation in the gene for neurofibromatosis 1, or NF1. As seen in Figure 9 below, five of the eight patients with a RAF fusion had either a complete response or a partial response per RANO criteria, defined as $^3$50% decrease, compared with baseline; the sum of products of perpendicular diameters of all measurable enhancing lesions sustained for at least 4 weeks. Two of eight patients with a RAF fusion had prolonged stable disease. One patient with a RAF fusion did not respond to DAY101. The one patient with an NF1-associated pLGG did not respond to DAY101. Radiologic responses using exploratory imaging measures such as volumetric image analysis or the recently published, but clinically unvalidated, RAPNO Criteria, or Response Assessment for Pediatric Neuro-Oncology, were largely consistent with the RANO scores.

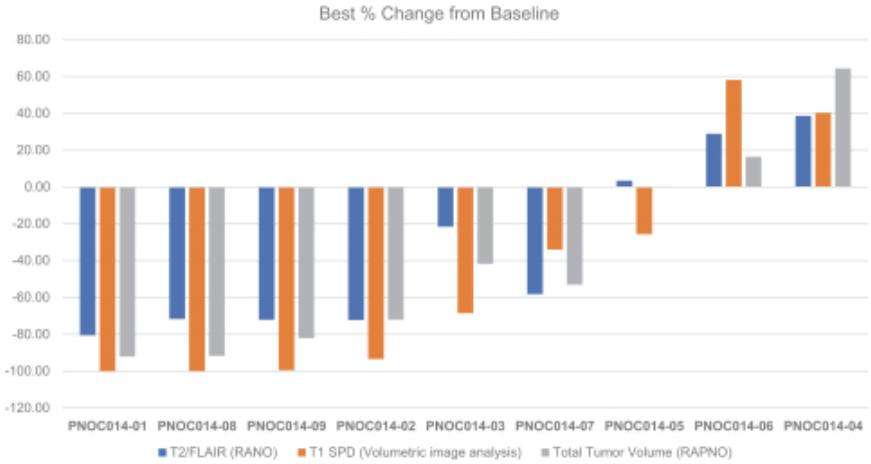


Figure 9. Five of nine patients in the DAY101 Phase 1 trial in pLGG had a complete (100% reduction) or partial response (>50% reduction in the bi-dimensional measurement of the tumor).

In addition to evaluating responses on-treatment, target lesions were identified in each patient during screening and baseline growth kinetics calculated from prior radiologic images. For eight of the nine patients, there was a documented history of tumor growth prior to trial enrollment. As shown in Figure 10, shrinkage in lesion size was observed in six of nine patients in the first radiologic images obtained after initiation of DAY101 dosing. The median time to response was 10.5 weeks, which is a notable observation given pLGG is an indolent, slow-growing tumor. Two patients achieved a complete response that was maintained throughout the dosing period of up to two years. Three patients had a partial response, two achieved prolonged stable disease, and two did not achieve a response. The trial allowed for treatment for maximum duration of two years.

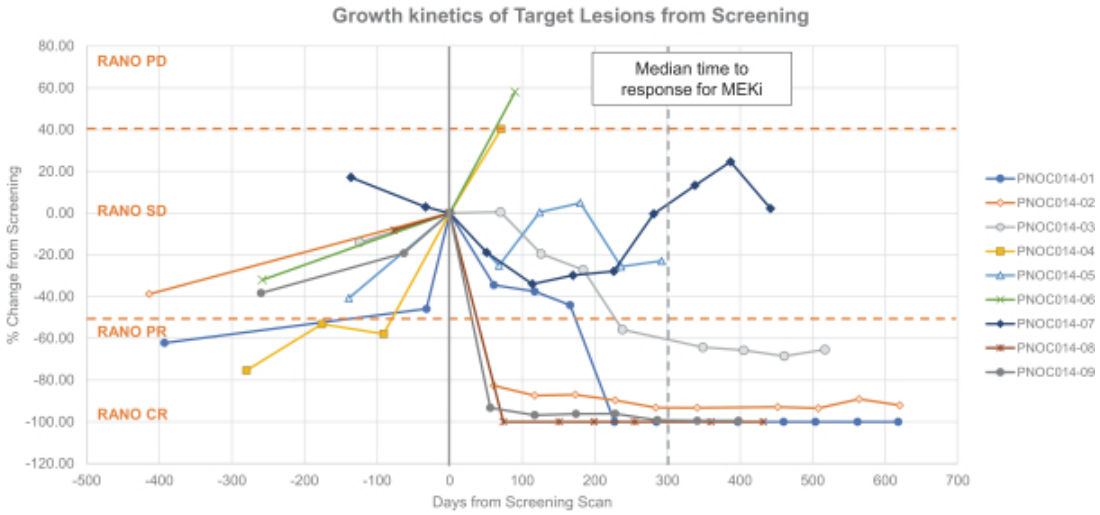


Figure 10. Individual patient responses in the DAY101 Phase 1 trial in pLGG.

Based on the results from Part A of PNOC014, DAY101 has been granted Breakthrough Therapy designation by the FDA for the treatment of pediatric patients with pLGG harboring an activating RAF alteration who require systemic therapy and who have either progressed following prior treatment or who have no satisfactory alternative treatment options. DAY101 also received Orphan Drug designation from the FDA for the treatment of malignant glioma.

***Clinical development plan for pLGG***

We have initiated a pivotal Phase 2 trial of DAY101, FIREFLY-1 (NCT04775485), in pediatric patients aged 6 months to 25 years with relapsed or progressive pLGGs harboring an activating BRAF alteration, such as a KIAA1549-BRAF fusion or a BRAF activating mutation, such as V600E. This is an open-label, global registrational, single-arm trial of oral DAY101 administered once weekly at a dose of 420 mg/m$^2$. Patients will continue on DAY101 until radiographic evidence of disease progression by RANO criteria as determined by treating investigator, unacceptable toxicity, patient withdrawal of consent, or death. We plan on enrolling 60 patients in this trial which we anticipate will generate a dataset that, in combination with the existing safety database, will have the potential to serve as the basis for regulatory approval. We believe this trial is pivotal based on preliminary discussions with regulatory agencies. The primary endpoint will be overall response rate, defined as the proportion of patients with best overall confirmed response rate (complete response and partial response based on the RANO criteria), as determined by independent review. Secondary and exploratory endpoints include the overall response rate based on RAPNO and volumetric analyses, event free survival, safety, functional outcomes, and quality of life measures.

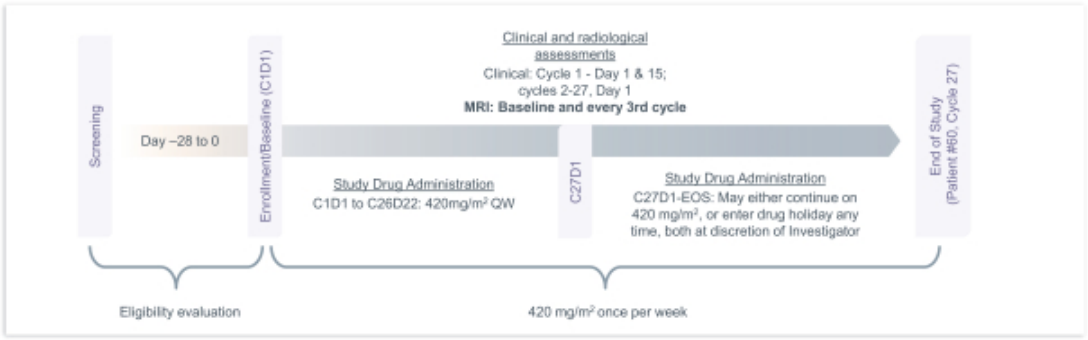


Figure 11. Design of the Phase 2 trial of DAY101 in pLGG.

DAY101 is currently dosed as immediate-release tablets. We are developing a pediatric formulation suitable for oral dosing of children as young as six months of age.

Comprehensive genomic profiling of recurrent or progressive pLGG is standard practice within pediatric neuro-oncology programs across the country, either utilizing CLIA/College of American Pathologists, or CAP, accredited hospital laboratories or third-party commercial vendors. The technology platforms and solutions for the identification of the BRAF V600E mutation and BRAF wild-type fusions currently in use by individual investigators will be used to meet the clinical trial enrollment criteria, while we continue to work with regulatory authorities to ensure that any requirement for a companion diagnostic assay or device are met.

We intend to initiate a Phase 3 trial of DAY101 in chemotherapy-naïve patients with pLGG in the first half of 2022. We believe that treating patients before they have undergone multiple rounds of toxic chemotherapy has the potential to both improve the efficacy of DAY101 and reduce the overall burden of therapy and associated toxicities associated with the use of currently-employed cytotoxic agents.

***Potential market opportunity for DAY101 in pLGG***

Brain tumors are the most frequently occurring solid tumors in children. While pLGG is the most common brain tumor diagnosed, representing 30% of all childhood brain tumors, the annual incidence of pLGG is 1.3 to 2.1 per 100,000 in the United States, accounting for about 1,000–1,600 new diagnoses in 2015. Given the incidence of this disease, our team recognized the market opportunity for developing DAY101 in this patient population based on the following rationale:

- Potential for DAY101, a pan-RAF inhibitor, to be a high-impact targeted therapeutic in pLGG where 50% to 60% of tumors are driven by genetic alterations in BRAF.
- Premium reimbursement precedents for high impact therapeutics in rare diseases, oncology and pediatrics.
- Chronic duration of treatment required over many years to address these slow-growing and relentless tumors.
- High unmet medical need with limited current treatment alternatives for patients.
- Strong value proposition for physicians, patients and families.

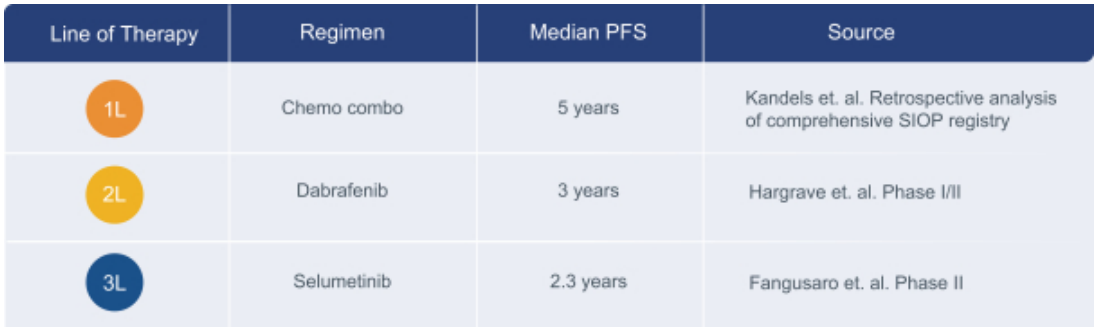


Figure 12. Patients with pLGG are typically treated for many years with a 10-year overall survival rate of 94%.

We believe DAY101, if approved, could become the standard of care for the treatment of pLGG. Due to the need for chronic administration, potentially over many years, the standard of care should be an effective, long-term therapeutic while providing a tolerability profile that minimizes long-term morbidity and treatment-associated toxicity. We believe that DAY101 has the potential to provide long-term benefit–similar to effective therapies for more traditional chronic rare diseases–to patients with pLGG. Observations from the Phase 1 trial, DAY101's profile suggest that DAY101 can potentially balance high rates of CNS penetrance leading to rapid and durable anti-tumor activity with favorable tolerability, a lack of serious adverse events in these pediatric patients, and clinical experience of long-term dosing of DAY101 weekly for up to two years. We also believe that DAY101's oral, once-weekly dosing regimen would appeal to physicians, patients and their parents.

***Potential applications of DAY101 in other MAPK-driven tumors***

To expand on our initial clinical development efforts in pediatric patients, we plan to explore DAY101 in additional indications for adolescent and adult patient populations where various MAPK pathway alterations are believed to play an important role in driving disease. This is supported by data from over 225 adult patients dosed with DAY101 in two separate Phase 1 trials previously conducted by Takeda. These trials also informed the starting dose level and weekly dosing regimen for future clinical trials, including the ongoing Phase 1 trial in pLGG. Results from these trials demonstrated that DAY101 was well-tolerated in patients with advanced cancers, both alone and in combination with other anti-cancer agents, but because patients were not enriched for RAF alterations expected to respond to DAY101 monotherapy, or studied in combinations that are now known to be more likely to lead to anti-tumor activity, only modest signs of efficacy were observed.

Based on data from preclinical studies, and building on the initial data from the Takeda-led Phase 1 trials, we intend to initiate a Phase 2 clinical trial of DAY101 as monotherapy in adult patients with advanced solid tumors with BRAF wild-type fusions. In parallel, we also plan to initiate a Phase 1b/2 clinical trial of DAY101 in combination with pimasertib, our MEK inhibitor product candidate. Simultaneous inhibition of both RAF and MEK has been shown to lead to synergistic antitumor activity in preclinical models, suggesting this combination may demonstrate enhanced anti-tumor activity in a variety of adult solid tumors driven by MAPK alterations, including NRAS mutant melanoma and lung cancers, tumors driven by Class II BRAF alterations, tumors with BRAF wild-type fusions, and tumors driven by KRAS alterations. We expect the DAY101 adult solid tumor monotherapy trial to begin in mid-2021, and the combination trial to begin in the first quarter of 2022.

In the future, we may explore DAY101 in combination with other selective inhibitors of key nodes in the MAPK signaling pathway. For example, as shown in Figure 13 below, a type II RAF inhibitor may provide synergistic benefit in combination with inhibitors of ERK or SHP2. We believe the ability of DAY101 to inhibit multiple forms of RAF gene alterations, including wild-type RAF and RAF dimers, without triggering the liabilities of paradoxical

activation observed with approved type I RAF inhibitors, enhance its profile as a potential backbone of combinations therapies designed to inhibit MAPK signaling in cancer.

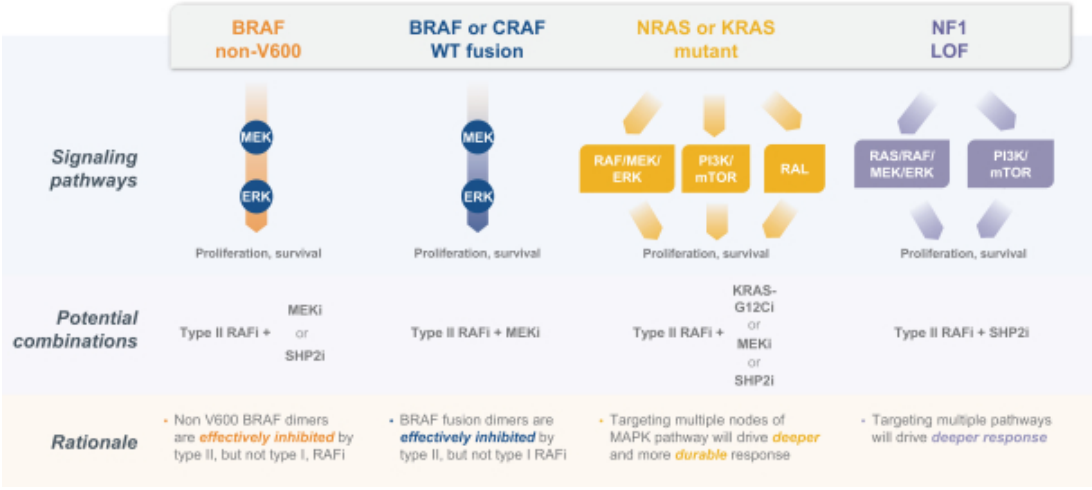


Figure 13. Combination therapies with other inhibitors of RAF signaling may result in synergistic antitumor activity.

***Investigator-initiated trial of DAY101 for the treatment of Langerhans cell histiocytosis***

We intend to leverage our relationships with academic investigators and pediatric oncology cooperative groups and consortia to explore the potential for DAY101 as a monotherapy in other rare pediatric tumor types. Langerhans cell histiocytosis, or LCH, is a rare disorder of dendritic immune cells that commonly affects the skin and bones but can involve any organ in the body, including lymph nodes, lungs, liver, spleen, bone marrow or brain. About one in 200,000 children develop LCH each year. Histiocytic disorders such as LCH and Erdheim-Chester disease also occur in adult patients and have been shown to have frequent (>50%) alterations in BRAF. Pediatric patients with LCH affecting multiple organs are treated with corticosteroids and chemotherapy. There are no standard-of-care regimens or approved agents for patients with relapsed disease. Over 60% of pediatric LCH patients have genetic alterations in the BRAF signaling pathway. Anecdotal reports and published case series have demonstrated proof-of-concept for the MAPK pathway inhibitors in LCH, and has opened up the possibility that patients with LCH may derive clinical benefit from DAY101. To date, there are no targeted therapies approved for pediatric patients with newly-diagnosed or relapsed LCH.

The Children's Oncology Group, a National Cancer Institute supported clinical trials group and the world's largest organization devoted exclusively to childhood and adolescent cancer research, is developing a group-wide clinical trial of DAY101 in relapsed LCH.

## Pimasertib

Pimasertib is an oral, highly-selective allosteric small molecular inhibitor of mitogen-activated protein kinase kinases 1 and 2 (MEK). Published preclinical studies indicated that pimasertib has higher CNS penetration than other MEK inhibitors. We obtained an exclusive license to pimasertib from Merck KGaA, Darmstadt, Germany in February 2021, and expect to initiate a Phase 1b/2 clinical trial in MAPK-altered tumors in the first quarter of 2022 to study the potentially beneficial combination of DAY101 and pimasertib in patients 12 years and older. Merck KGaA, Darmstadt, Germany previously undertook extensive non-clinical and clinical development work

through Phase 2, including a solid tumor trial in Japan and combinations of pimasertib with other agents. Pimasertib showed monotherapy clinical activity, including an improvement in the objective response rate and progression free survival, but not overall survival, in patients NRAS-mutant melanoma when compared to dacarbazine in a prospective randomized Phase 2 trial. The main adverse events observed during the clinical development of pimasertib were typical for other in-class allosteric MEK inhibitors, including GI-related adverse events, elevation of CPK, skin rash, and visual disturbances.

***Preclinical studies***

MEK is a critical signaling node that lies downstream of RAS in the MAPK pathway, and is a unique dual-specificity kinase that phosphorylates both serine/threonine and tyrosine residues. MEK consists of two isoforms, MEK1 and MEK2, which in turn phosphorylate ERK1 and ERK2. Activated ERK1/2 control a diverse range of cellular processes through their many substrates (>160) that are located in cellular membranes, the cytoplasm and nucleus. Many of these are transcription factors that are important in cellular proliferation, differentiation, survival, angiogenesis and migration.

As shown below in Figure 15, in cancers driven by elevated RAS or RAF signaling, inhibition of MEK releases the blockade on RAS and can contribute to increased RAS-mediated signaling and pathway activation, further desensitizing the cells to MEK inhibition. MEK inhibitors given as a monotherapy have demonstrated limited anti-tumor activity in pre-clinical tumor models of elevated RAS or RAF signaling. Most cancers that acquire resistance to MEKi and continue to proliferate do so through reactivation of the MAPK pathway and subsequent reactivation of ERK. ERK reactivation can occur through alterations or mutations to molecules upstream of ERK in the MAPK pathway such as RAS, RAF, NF1, or MEK. One approach to circumvent the overactivation of RAS signaling in such tumor models has been to combine a RAF inhibitor with a MEK inhibitor to inhibit the pathway at two different nodes which has been shown by multiple groups to result in synergistic effects on inhibiting cell and tumor model growth.

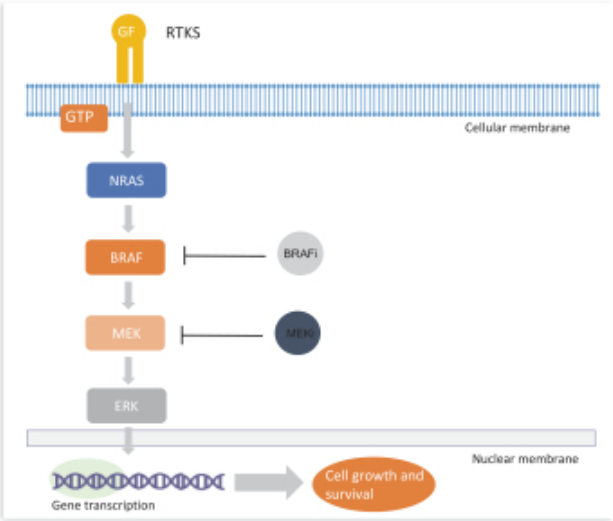


Figure 14: Dual inhibition of BRAF and MEK is an important strategy for addressing MAPK-driven tumors.

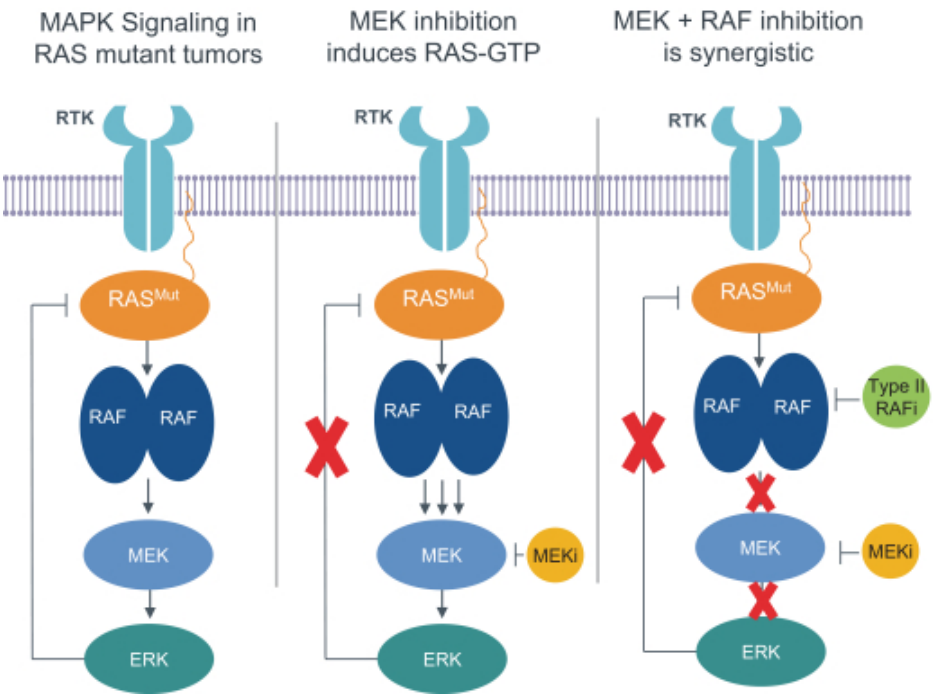


Figure 15. Model of the proposed mechanism of induced RAF inhibitor sensitivity. Left panel: under basal conditions, the MAPK pathway has multiple feedback loops negatively regulating upstream pathway activation, including RAS-GTP levels and RAF activation, thereby ensuring optimal pathway signaling. Middle panel: upon MEK inhibitor treatment, these feedback loops are disabled resulting in RAS-GTP induction, BRAF/CRAF dimerization, and RAF kinase activation. Right panel: Combination treatment with a MEK inhibitor and a type II RAF inhibitor is expected to exhibit synergistic effects. Modified from Yen et al. Cancer Cell, 2018.

Consistent with this approach, preclinical experiments showed the combination of a type II RAF inhibitor and pimasertib indeed led to synergistic cell killing activity. Calu-6 cells, a human lung adenocarcinoma cell line containing a KRAS G12C mutation, was found to be sensitive to cell killing by both BGB-283, a type II RAF inhibitor, and pimasertib. Treatment of Calu-6 cells with a combination of these inhibitors resulted in greater cell killing, as the $EC_{50}$ for a 3 µM dose of BGB-283 was lowered by approximately 60-fold in the presence of pimasertib. These results suggest treatment with a MEK inhibitor in the presence of a RAF inhibitor result in an added cell killing benefit than observed with either inhibitor alone.

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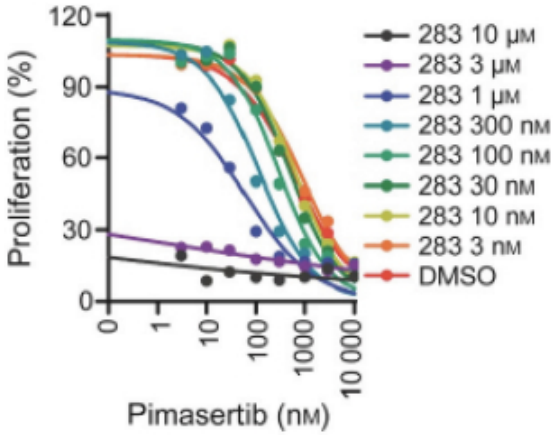


Figure 16. The sensitivity of Calu-6 cells to pimasertib was enhanced when cells were treated with BGB-283, a type II RAF inhibitor.

Similarly, in experiments with Calu-6 cells as well as NCI-H1792 cells, which contain a KRAS G12C mutation, cell lines were shown to be sensitive to either DAY101 or MEKi-1 as monotherapy, however a combination of these inhibitors resulted in greater cell killing than observed with either inhibitor alone. These data further support the potential added benefit of combining a MEK inhibitor, with a type II RAF inhibitor, such as DAY 101 as a strategy to address certain MAPK-driven adult solid tumors.

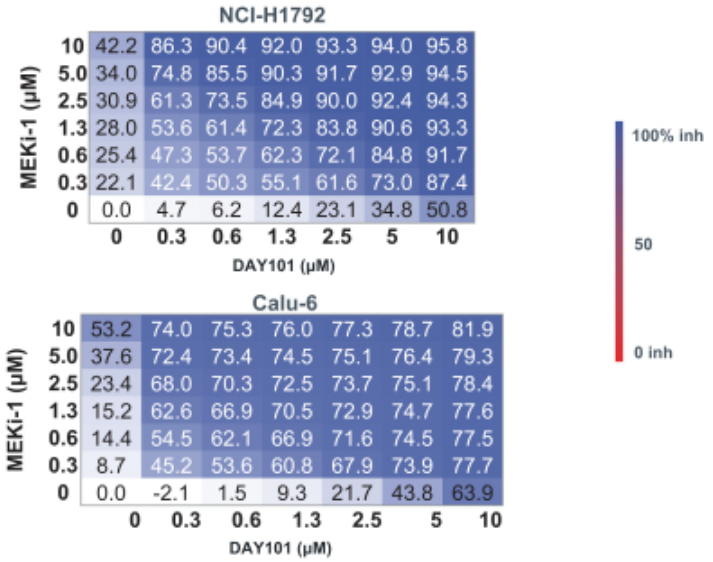


Figure 17. Synergy was observed with DAY101 was combined with the MEK inhibitor in KRAS G12C or Q61 mutant tumor cell lines *in vitro.*

***Clinical results***

Pimasertib has been dosed in over 850 cancer patients in trials sponsored by Merck KGaA, Darmstadt, Germany KGaA, both as monotherapy and in combination with standard of care therapies, such as gemcitabine, dacarbazine, and the colorectal cancer regimen FOLFIRI, as well as selected investigational agents (the HDM2

inhibitor SAR405838, the PI3K/mTOR inhibitor SAR245409). To date, there have been no clinical trials investigating the potential of pimasertib in combination with a RAF inhibitor.

The initial Phase 1 trial of pimasertib was designed to evaluate different schedules and escalating doses of pimasertib monotherapy in patients with various solid tumors, including colorectal, melanoma, prostate, lung, and mesothelioma. The primary goal of this trial was to establish safety and pharmacokinetics to determine the most appropriate dose and schedule for further investigation. Preliminary efficacy was also assessed in terms of tumor response. While several examples of stable disease were observed across tumor types, multiple partial responses were observed in melanoma patients that triggered further investigations in this tumor type. In a dose expansion arm of this trial, 89 melanoma patients received pharmacologically active doses of pimasertib ranging from 28 mg to 255 mg/day across four dose regimens. The ORR was 12.4%, including one complete response, ten partial responses, and 46 patients with stable disease. In the Phase 1 monotherapy trial, dose limiting toxicities were mainly observed at doses of 120 mg/day or greater and included skin rash/acneiform dermatitis and ocular events, such as serous retinal detachment. The most common drug-related adverse events were consistent with effects observed with other MEK inhibitors, including diarrhea, skin disorders, ocular disorders, asthenia/fatigue, and peripheral edema. According to a publication of the results of the melanoma patients enrolled on the monotherapy Phase 1 clinical trial, TEAEs of Grade 3 or higher were experienced by eight out of the 69 patients enrolled. The TEAEs were skin events (n=4), ocular events (n=2) and diarrhea (n=2). All four skin events occurred in the continuous (R3) twice-daily group, whereas ocular and diarrhea events were reported in both the continuous twice-daily group and the discontinuous group. High doses of pimasertib were associated with cases of retinal detachment; however, this and all other toxicities were manageable with supportive care and treatment interruption or dose reduction.

Merck KGaA, Darmstadt, Germany also conducted a multicenter, open-label, randomized Phase 2 trial in 194 patients with NRAS-mutated locally advanced or metastatic cutaneous melanoma, which compared single-agent pimasertib dosed at 60 mg BID to dacarbazine. Median progression free survival, or PFS, in pimasertib treated patients was 13.0 weeks, which was significantly longer than the 6.9 weeks observed in dacarbazine treated patients.

***Clinical development plan***

We expect to initiate a master protocol encompassing Phase 1b and Phase 2 trials to study the potentially beneficial combination of DAY101 and pimasertib in patients 12 years and older with various MAPK pathway-altered tumors. As shown in Figure 18 below, the protocol is designed to have two substudies: 1) a DAY101 monotherapy study for patients with BRAF wild-type, or BRAFwt, fusions; and 2) a substudy to evaluate DAY101 plus pimasertib for patients with NRAS mutations, BRAFwt fusions and other BRAF mutations with the exception of V600E and V600K mutations. The combination substudy will be a Phase 1b dose ranging trial to establish the Phase 2 dose of DAY101 in combination with pimasertib. Once this dose is established, patients will be enrolled in the combination dose expansion portion of this trial in cohorts defined by genetic aberration, such as NRAS mutation or BRAFwt fusion. The primary endpoint for the Phase 1b portion of the combination substudy is safety. For the monotherapy substudy in BRAFwt fusions and the Phase 2 expansion cohorts, the primary endpoint is overall response rate and duration of response. We anticipate initiation of the Phase 2 monotherapy substudy in mid-2021 and the Phase 1b combination substudy in the first quarter of 2022. Consistent with our approach to drug development, as well as recently published US FDA guidance, we have decided to design these initial combination substudies trials to be able to include adolescent patients 12 years and older with relapsed MAPK-driven solid tumors.

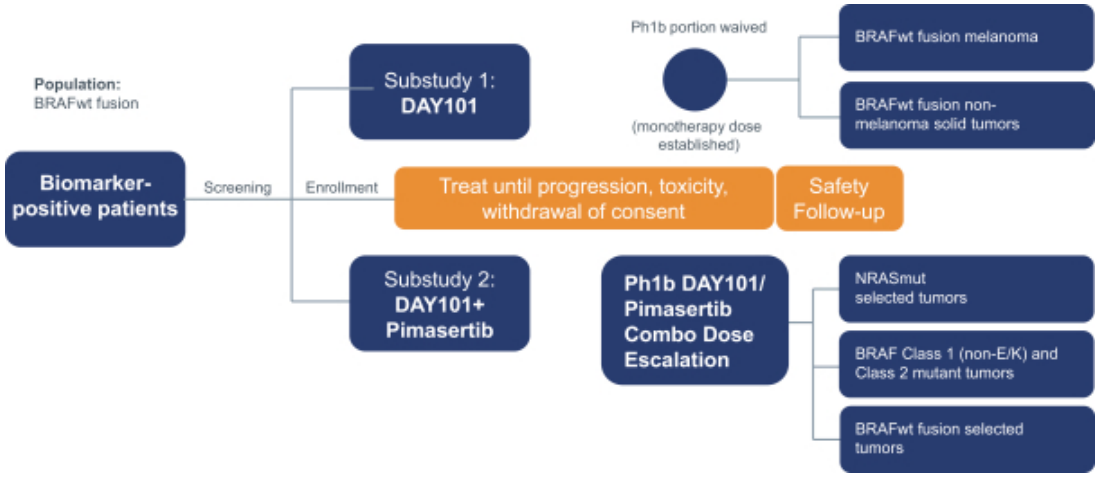


Figure 18. Design of the Phase 1b/2 trial of DAY101 in combination with pimasertib and Phase 2 trial of DAY101 as a monotherapy.

Preclinical data from multiple groups suggest that the combination of a MEK inhibitor, such as pimasertib, and a type II RAF inhibitor will have beneficial activity in various MAPK-driven tumor contexts, meaning that potent cell killing activity was obtained at lower concentrations of pimasertib than expected from data generated from monotherapy treatment. We believe that appropriate dosing of pimasertib in combination with DAY101 may limit frequency and severity of adverse events observed with pimasertib alone, dosed at the MTD, owing to the ability to define a biologically active dose combination. We anticipate exploring pediatric combination trials once additional dosing and safety data is collected in adult patients.

## Manufacturing

We do not own or operate, and currently have no plans to establish, any manufacturing facilities. We rely, and expect to continue to rely, on third parties for the manufacture of our product candidates for clinical testing, as well as for commercial manufacturing if any of our product candidates obtain marketing approval. We also rely, and expect to continue to rely, on third parties to package, label, store and distribute our investigational product candidates, as well as our commercial products if marketing approval is obtained. We believe that this strategy allows us to maintain a more efficient infrastructure by eliminating the need for us to invest in our own manufacturing facilities, equipment and personnel while also enabling us to focus our expertise and resources on the development of our product candidates.

To date, we have contracted to obtain active pharmaceutical ingredients, or API, drug product, and packaging/distribution for our product candidates from STA Pharmaceutical Hong Kong Limited, Quotient Sciences – Philadelphia, LLC, and Fisher Clinical Services respectively, upon whom we currently rely as single-source contract manufacturing organizations, or CMOs. In addition, as part of the Takeda Asset Agreement we obtained an amount of DAY101 that we believe is a sufficient base amount to initiate our pivotal Phase 2 clinical trial. We are in the process of developing our supply chain for each of our product candidates and intend to put in place framework agreements under which third-party CMOs will generally provide us with necessary quantities of API, drug product, packaging/distribution on an order by order basis based on our development needs. As we advance our product candidates through development, we will explore adding backup suppliers for the API, drug product, packaging and formulation for each of our product candidates to protect against any potential supply disruptions.

We generally expect to rely on third parties for the manufacture of any companion diagnostics we may develop.

## Competition

The pharmaceutical and biotechnology industries are characterized by rapidly advancing technologies, intense competition and a strong emphasis on proprietary products. While we believe that our technology, the expertise of our team, and our development experience and scientific knowledge provide us with competitive advantages, we face increasing competition from many different sources, including pharmaceutical and biotechnology companies, academic institutions, governmental agencies and public and private research institutions. Product candidates that we successfully develop and commercialize may compete with existing therapies and new therapies that may become available in the future.

Many of our competitors, either alone or with their collaborators, have significantly greater financial resources, established presence in the market, and expertise in research and development, manufacturing, preclinical and clinical testing, obtaining regulatory approvals and reimbursement and marketing approved products than we do. These competitors also compete with us in recruiting and retaining qualified scientific and management personnel, establishing clinical trial sites and patient registration for clinical trials, as well as in acquiring technologies complementary to, or necessary for, our programs. Smaller or early-stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large and established companies. Additional mergers and acquisitions may result in even more resources being concentrated in our competitors.

Our commercial potential could be reduced or eliminated if our competitors develop and commercialize products that are safer or more effective, have fewer or less severe side effects, and are more convenient or less expensive than products that we may develop. Our competitors also may obtain FDA or other regulatory approval for their products more rapidly than we can, which could result in our competitors establishing a strong market position before we are able to enter the market or could otherwise make our development more complicated. We believe the key competitive factors affecting the success of all of our programs are likely to be efficacy, safety and patient convenience.

We believe that DAY101 has the potential to be the first pan-RAF inhibitor to be approved by the FDA, for use in the treatment of pLGG, as we are not aware of competing product candidates that are further along in the development process. However, this does not indicate that DAY101 has been proven effective or that it will receive regulatory approval.

Three BRAF inhibitors have been approved by the FDA for the treatment of tumors containing V600E or V600K mutations. These first-generation BRAF inhibitors, known more generally as Type I RAF inhibitors, are vemurafenib, marketed as Zelboraf® by Genentech; dabrafenib, marketed as Tafinlar® by Novartis; and encorafenib, marketed as Braftovi® by Pfizer. Dabrafinib, in combination with trametinib, is being evaluated in a Novartis-sponsored randomized Phase 2 clinical trial in newly-diagnosed patients with BRAF V600 mutant pLGG.

Four MEK inhibitors have been approved by the FDA. Three have been approved for the treatment of tumors containing BRAF V600E or V600K mutations, including cobimetinib, marketed as Cotellic® by Genentech; trametinib, marketed as Tafinlar® by Novartis; and binimetinib, marketed as Mektovi® by Pfizer. A fourth MEK inhibitor–selumetinib, marketed as Koselugo® by AstraZeneca, has been approved for the treatment of pediatric patients, 2 years of age and older, with neurofibromatosis type 1, or NF1, who have symptomatic, inoperable plexiform neurofibromas.

Novartis is developing the next-generation BRAF inhibitor LXH254 in combination with various agents, in Phase 1/2 clinical trials. BeiGene has two next-generation BRAF programs: Lifirafenib (BGB-283), which is currently in a Phase 1/2 trial in combination with mirdametinib, and BGB-3245 which is currently in a single agent in Phase 1

dose escalation study. Hanmi / Genentech are developing belvarafenib in combination with cobimetinib in a Phase 1b clinical trial. Fore Therapeutics (formelly NovellusDx) is developing the RAF dimer breaker PLX8394 in a Phase 1/2 trial in combination with cobicistat. Kinnate and Black Diamond Therapeutics have next-generation BRAF inhibitors in various stages of preclinical development.

With regard to the treatment of pLGG, some MEK inhibitors and some type I RAF inhibitors other targeted therapies are being studied in academic investigator-initiated clinical trials, and in some regions may be being used in an off-label manner. The off-label use of these agents may represent competition for DAY101 when it enters the market.

## Material agreements

***Takeda asset agreement***

On December 16, 2019, DOT Therapeutics-1, Inc., our subsidiary, entered into an asset purchase agreement, or the Takeda Asset Agreement, with Millennium Pharmaceuticals, Inc., an affiliate of Takeda Pharmaceutical Company Limited, or Takeda. Pursuant to the Takeda Asset Agreement, we purchased certain technology rights and know-how related to TAK-580 (which is now DAY101) being developed to treat patients with primary brain tumors or brain metastases of solid tumors. We also received clinical inventory supplies to use in our research and development activities of such RAF-inhibitor and an assigned investigator clinical trial agreement. Takeda also assigned to us its exclusive license agreement, or the Viracta License Agreement, with Sunesis Pharmaceuticals, Inc. (which recently merged with Viracta), or Viracta. Takeda also granted us a worldwide, sublicensable exclusive license under specified patents and know-how and non-exclusive license under other patents and know-how generated by Takeda under the Takeda Asset Agreement or otherwise through practice of the technology assigned or licensed to us under the Takeda Asset Agreement, in each case, to develop, manufacture and commercialize products containing DAY101 in all fields of use except for certain specified therapeutic indications. We also granted Takeda an exclusive license under the technology assigned or licensed to us under the Takeda Asset Agreement and a non-exclusive license under any patents and know-how generated by us under the Takeda Asset Agreement or otherwise through the practice of the technology assigned or licensed to us under the Takeda Asset Agreement, in each case, only for Takeda to develop, manufacture and commercialize products containing DAY101 in the field excluded from our license grant. This grant back license to Takeda will be terminated at the time of Conversion in connection with the Millennium Stock Exchange Agreement.

Under the Takeda Asset Agreement, we are obligated to use commercially reasonable efforts to develop and seek regulatory approval for at least one product in our licensed field in either the United States or one of the major European markets and following receipt of regulatory approval, to commercialize such product in such country.

In consideration for the sale and assignment of assets and the grant of the license to us under the Takeda Asset Agreement, we made an upfront payment of $1.0 million in cash and issued 9,857,143 shares of Series A redeemable convertible preferred stock in our subsidiary, DOT Therapeutics-1, Inc. We estimated fair value of issued shares as $9.9 million, based on the price paid by other investors for issued shares in the Series A financing of DOT Therapeutics-1, Inc. Pursuant to the terms of the Millennium Stock Exchange Agreement and the Plan of Conversion, Millennium Pharmaceuticals, Inc. agreed to exchange the 9,857,143 shares of Series A redeemable convertible preferred stock of DOT Therapeutics-1, Inc. for 2,782,960 shares of our common stock pursuant to and contingent upon the effectiveness of the Conversion and subject to the satisfaction of the other terms and conditions of the Millennium Stock Exchange Agreement. We recorded a total of $10.9 million consideration for license and clinical supplies as research and development expenses. To the extent activities by Takeda with respect to its exploitation of a product containing DAY101 in its field triggers a milestone under the Viracta License

Agreement, Takeda will, at our election, pay such milestone directly to Viracta, provided, that if we subsequently trigger such milestone based on our exploitation of such products in our field, then we will reimburse Takeda such paid milestone amount. Takeda will also be responsible for any royalty payments owed to Viracta pursuant to the Viracta License Agreement as a result of Takeda's exploitation of such product in its field. Takeda's right exploit a product in its field will be terminated at the time of Conversion in connection with the Millennium Stock Exchange Agreement.

The term of the Takeda Asset Agreement will expire on a country-by-country basis upon expiration of all assigned patent rights and all licensed patent rights in such country. Takeda may terminate the Takeda Asset Agreement prior to our first commercial sale of a product if we cease conducting any development activities for a continuous and specified period of time and such cessation is not agreed upon by the parties and is not done in response to guidance from a regulatory authority. Additionally, Takeda can terminate the Takeda Asset Agreement for our bankruptcy. In the event of termination of the Takeda Asset Agreement by Takeda as a result of our cessation of development or bankruptcy, all assigned patents, know-how and contracts (other than the Viracta License Agreement) will be assigned back to Takeda and Takeda will obtain a reversion license under patents and know-how generated to exploit all such terminated products.

***Millennium stock exchange agreement***

On May 4, 2021, we entered into a Stock Exchange Agreement with Millennium Pharmaceuticals, Inc. an affiliate of Takeda Pharmaceutical Company Limited, or Takeda. Pursuant to the terms of the Millennium Stock Exchange Agreement and the Plan of Conversion, Millennium Pharmaceuticals, Inc. agreed to exchange 9,857,143 shares of Series A redeemable convertible preferred stock of DOT Therapeutics-1, Inc., our subsidiary, for 2,782,960 shares of our common stock pursuant to and contingent upon the effectiveness of the Conversion, and subject to the satisfaction of the other terms and conditions of the Millenium Stock Exchange Agreement.

***Viracta license agreement***

On December 16, 2019, we amended and restated the Viracta License Agreement that was assigned to us pursuant to the Takeda Asset Agreement. Under the Viracta License Agreement, we received a worldwide exclusive license under specified patent rights and know-how to develop, use, manufacture, and commercialize products containing compounds binding the RAF protein family.

Pursuant to the Viracta License Agreement, if we do not use commercially reasonable and diligent efforts to develop, obtain regulatory approval and commercialize a licensed product and do not remedy any such failure within a specified period of time, then Viracta has the right to terminate our license to such licensed product and subject to specified rights that Takeda has pursuant to the Takeda Asset Agreement, Viracta will obtain a reversion license to exploit such licensed product.

Under the Viracta License Agreement, we paid $2.0 million upfront in cash to Viracta, which was recorded as research and development expenses. We are also required to make milestone payments of up to $54 million upon achievement of specified development and regulatory milestones. No milestones were achieved and recorded as of December 31, 2020 and March 31, 2021. Additionally, if we obtain a priority review voucher with respect to a licensed product and sell such priority review voucher to a third party or use such priority review voucher, we are obligated to pay Viracta a specified percentage in the mid-teen digits of all net consideration received from any such sale or of the value of such used priority review voucher, as applicable. Commencing on the first commercial sale of a licensed product in a country, we are obligated to pay tiered royalties ranging in the mid-single-digit percentages on net sales of licensed products, if any. Our obligation to pay royalties will end on a country-by-country and licensed product-by-licensed product basis commencing on the first

commercial sale in a country and continuing until the later of: (i) the expiration of the last valid claim of the Viracta licensed patents, jointly owned collaboration patents or specified patents owned by us covering the use or sale of such product in such country, (ii) the expiration of the last statutory exclusivity pertaining to such product in such country or (iii) the tenth anniversary of the first commercial sale of such product in such country. No milestones were achieved and recorded as of December 31, 2019 and 2020.

The term of the Viracta License Agreement will expire on a licensed product-by-licensed product and country-by-country basis upon the expiration of our obligation to pay royalties to Viracta with respect to such product in such country. We have the right to terminate the Viracta License Agreement with respect to any or all of the licensed products at will upon a specified notice period. Additionally, either party can terminate the Viracta License Agreement for the other party's uncured material breach or bankruptcy. Viracta also has the right to terminate our rights to a licensed product if we breach our diligence obligations with respect to such licensed product and do not cure such breach within a specified time period. In the event of termination of the Viracta License Agreement by Viracta as a result of our breach or bankruptcy or by us for convenience, then subject to specified rights that Takeda has pursuant to the Takeda Asset Agreement, Viracta will obtain a reversion license to exploit all such terminated licensed products.

***License agreement with Merck KGaA, Darmstadt, Germany***

On February 10, 2021, Day One Biopharmaceuticals, Inc., our subsidiary, entered into a license agreement, or the MRKDG License Agreement, with Merck KGaA, Darmstadt, Germany, a pharmaceutical corporation located in Darmstadt, Germany. Under the MRKDG License Agreement, Merck KGaA, Darmstadt, Germany as licensor granted to Day One Biopharmaceuticals, Inc., an exclusive worldwide license, with the right to grant sublicenses through multiple tiers, under specified patent rights and know-how for us to research, develop, manufacture and commercialize products containing and comprising the pimasertib and MSC2015103B compounds. MSC2015103B is an ATP-non-competitive, allosteric inhibitor of mitogen-activated protein extracellular signal- regulated kinase kinase (MEK). MSC2015103B has been studied in a Phase 1 dose escalation trial in adult subjects (n=28) with advanced solid tumors. A once-weekly (n=21) and three-times-weekly (n=7) dose schedule were studied. Overall, the most common treatment-emergent adverse events reported (in > 40% of subjects) were fatigue in the Schedule 1 group; and constipation, nausea, hyponatremia, and hypokalemia in the Schedule 2 group. The plasma half-life of MSC2015103B is approximately 100 hours. Our exclusive license grant is subject to a non-exclusive license granted by Merck KGaA, Darmstadt, Germany's affiliate to a cancer research organization and Merck KGaA, Darmstadt, Germany retains the right to conduct, directly or indirectly, certain ongoing clinical studies relating to pimasertib.

Under the MRKDG License Agreement, we have obligations to use commercially reasonable efforts to develop and commercialize at least two licensed products in at least two specified major market countries by the year 2029.

In consideration for the rights granted under the MRKDG License Agreement, we made an upfront payment of $8.0 million to the licensor, which was recorded as research and development expenses. We may also be required to make additional payments of up to $367.0 million based upon the achievement of specified development, regulatory, and commercial milestones, as well a high, single-digit royalty percentage on future net sales of licensed products, if any. Milestones and royalties are contingent upon future events and will be recorded when the milestones are achieved and when payments are due. The royalties will be payable on a country-by-country and licensed product-by-licensed product basis commencing on the first commercial sale in a country and continuing until the later of: (i) the expiration of the last valid claim of Merck KGaA, Darmstadt, Germany's licensed patents in such country or (ii) the 12$^{th}$ anniversary of the first commercial sale of such licensed product in such country.

The term of the MRKDG License Agreement will expire on a licensed product-by-licensed product and country-by-country basis upon the expiration of our obligation to pay royalties to the licensor with respect to such licensed product in such country and will expire in its entirety upon the expiration of all of our payment obligations with respect to all licensed products and all countries under the MRKDG License Agreement. We have the right to terminate the MRKDG License Agreement at will upon a specified notice period. Merck KGaA, Darmstadt, Germany has the right to terminate the MRKDG License Agreement in the event we challenge the validity of the licensed patents. Merck KGaA, Darmstadt, Germany may also terminate the MRKDG License Agreement in the event we acquire a specified type of competing product and do not elect to divest such competing product within a specified time period or in the event we are acquired by an entity with a specified type of competing product and do not either direst such competing product within a specified time period or do not segregate and exploit such competing product independent of the exploitation of the licensed products. Additionally, either party can terminate the MRKDG License Agreement for the other party's uncured material breach or bankruptcy.

## Intellectual property

Our commercial success depends in part on our ability to obtain and maintain proprietary or intellectual property protection for our drug candidates, technology and know-how, to operate without infringing the proprietary or intellectual property rights of others and to prevent others from infringing our proprietary or intellectual property rights. We expect that we will seek to protect our proprietary and intellectual property position by, among other methods, pursuing and obtaining patent protection in the United States and in jurisdictions outside of the United States related to our proprietary technology, inventions, improvements and drug candidates that are important to the development and implementation of our business. We also rely on trade secrets, know-how, trademarks, continuing technological innovation and licensing opportunities to develop and maintain our proprietary and intellectual property position. Presently, our patent portfolio includes issued patents and pending patent applications that are in-licensed, owned and/or co-owned by us.

We currently, and expect that we will continue to, own, co-own or in-license patent applications and issued patents related to our key drug candidates in an effort to establish intellectual property positions protecting these drug candidates, as well as their use in the treatment of various diseases such as pediatric oncology. For our drug candidates, we generally pursue multilayered patent protection covering compositions of matter, methods of use and methods of manufacture. We intend to strengthen the patent protection of our drug candidates and technologies through additional patent application filings.

As of March 12, 2021, we owned or co-owned a patent portfolio consisting of seven patent families, exclusively in-license three patent families from Merck KGaA, Darmstadt, Germany, and non-exclusively in-license one patent family from Takeda Pharmaceutical Company Limited. The seven patent families that we own or co-own include patent applications and issued patents that cover compositions of matter, pharmaceutical compositions, methods of synthesis, synthetic intermediates, methods of treatment and combination therapies related to our product candidate DAY101. The non-exclusively in-licensed patent family from Takeda Pharmaceutical Company Limited covers a catalyst that may be used in a preparation of our product candidate DAY101. The three exclusively in-licensed patent families from Merck KGaA, Darmstadt, Germany cover compositions of matter and methods of use for our MEK inhibitor product candidates.

Our owned or co-owned patent portfolio, as of March 12, 2021, includes a co-owned patent family that is directed to the compositions of matter and methods of use of DAY101 with four issued US patents and multiple foreign patents and applications including granted patents in Germany, France, United Kingdom, Belgium, Switzerland, Denmark, Spain, Ireland, Italy, Netherlands, Australia, Brazil, Canada, China, India, Japan, Korea, Mexico, Singapore, South Africa, Taiwan, and Hong Kong, which are expected to expire between 2028 and 2031.

Our owned or co-owned patent portfolio includes a patent family that is directed to pharmaceutical formulations of DAY101 with an issued US patent and multiple foreign patents and applications including granted patents in Germany, France, United Kingdom, Belgium, Switzerland, Spain, Ireland, Italy, Luxembourg, Monaco, Japan, and China, which are expected to expire in 2035. Our owned or co-owned patent portfolio includes an additional pharmaceutical formulation patent family that is directed to formulations of DAY101 including a pending PCT application that, if nationalized and issued, is expected to expire in 2040. Our owned or co-owned patent portfolio also includes a patent family directed to methods of synthesizing DAY101 including two pending US applications and at least 10 foreign patent applications that, if issued, are expected to expire in 2038. Our owned or co-owned patent portfolio further includes a patent family directed to methods of treating cancer using DAY101 in combination with docetaxel and/or paclitaxel with one pending US application and multiple foreign patents and patent applications including granted patents in Germany, France, United Kingdom, Belgium, Switzerland, Spain, Ireland, Italy, Luxembourg, and Monaco that are expected to expire in 2035. Our owned or co-owned patent portfolio includes a patent family with two US provisional applications directed to methods of treating pediatric low grade glioma that, if converted to non-provisional applications and issued, are expected to expired in 2041. Our owned or co-owned patent portfolio further includes a patent family with one US provisional application directed to methods of treating cancer using DAY101 in combination with a MEK inhibitor such as pimasertib that, if converted to a non-provisional application and issued, is expected to expire in 2042.

Our patent portfolio, as of March 12, 2021, includes a patent family exclusively in-licensed from Merck KGaA, Darmstadt, Germany that covers the composition of matter and methods of use of pimasertib with four issued US patents and multiple foreign patents and/or applications including granted patents in Argentina, Austria, Australia, Belgium, Bulgaria, Brazil, Canada, Switzerland, China, Cyprus, Czech Republic, Germany, Denmark, Eurasia, Estonia, Spain, Finland, France, United Kingdom, Greece, Hong Kong, Hungary, Ireland, Israel, India, Iceland, Italy, Japan, Korea, Lithuania, Luxembourg, Latvia, Monaco, Mexico, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Sweden, Singapore, Slovenia, Slovakia, Turkey, Ukraine, and South Africa that are expected to expire between 2025 and 2028. Our patent portfolio includes a patent family exclusively in-licensed from Merck KGaA, Darmstadt, Germany that is directed to the solid state form of pimasertib with one issued US patent and multiple foreign patents and/or applications, including granted patents in Austria, Australia, Belgium, Canada, Switzerland, Czech Republic, Germany, Denmark, Eurasia, Spain, France, United Kingdom, Italy, Japan, Luxembourg, Mexico, Netherlands, Poland, Portugal, Russian Federation, Sweden, Singapore, Taiwan, and South Africa, which are expected to expire in 2033. Our patent portfolio further includes a patent family exclusively in-licensed from Merck KGaA, Darmstadt, Germany that covers the composition of matter and methods of use of MSC2015103B with two issued US patents and multiple foreign patents and/or applications, including granted patents in Argentina, Austria, Australia, Belgium, Brazil, Canada, Switzerland, China, Czech Republic, Germany, Denmark, Eurasia, Estonia, Spain, Finland, France, United Kingdom, Hong Kong, Croatia, Hungary, Ireland, Israel, India, Iceland, Italy, Korea, Lithuania, Luxembourg, Latvia, North Macedonia, Malta, Mexico, Netherlands, Norway, New Zealand, Philippines, Poland, Portugal, Romania, Russian Federation, Sweden, Singapore, Slovenia, Slovakia, Turkey, Ukraine, and South Africa, which are expected to expire in 2029.

The term of individual patents depends upon the legal term for patents in the countries in which they are granted. In most countries in which we file, the patent term is generally 20 years from the earliest date of filing a non-provisional patent application. In the United States, the patent term may, in certain cases, be lengthened by patent term adjustment, which compensates a patentee for administrative delays by the U.S. Patent and Trademark Office, or USPTO, in examining and granting a patent or may be shortened if a patent is terminally disclaimed over a commonly owned patent or a patent naming a common inventor and having an earlier expiration date. Additionally, the Drug Price Competition and Patent Term Restoration Act of 1984, or the Hatch-Waxman Act, permits patent term extension of up to five years beyond the expiration date of a U.S. patent as

partial compensation for the length of time a drug is under regulatory review while a patent that covers the drug is in force. The length of the patent term extension is related to the length of time the drug is under regulatory review. Patent term extension cannot extend the remaining term of a patent beyond a total of 14 years from the date of product approval, only one patent applicable to each regulatory review period may be extended and only those claims covering the approved drug, a method for using it or a method for manufacturing it may be extended.

Similar provisions are available in the European Union and certain other foreign jurisdictions to extend the term of a patent that covers an approved drug. In the future, if and when our drug candidates receive approval by the FDA or foreign regulatory authorities, we expect to apply for patent term extensions on issued patents covering those products, if available. However, there is no guarantee that the applicable authorities, including the FDA in the United States, will agree with our assessment of whether such extensions should be granted, and, if granted, the length of such extensions. For more information regarding the risks related to our intellectual property, see the section titled “Risk factors–Risks related to our intellectual property.” Expiration dates referred to above are without regard to potential patent term extension or other market exclusivity that may be available to us.

The patent positions of biopharmaceutical companies like ours are generally uncertain and involve complex legal, scientific and factual questions. Our commercial success will also depend in part on not infringing upon the proprietary rights of third parties. It is uncertain whether the issuance of any third-party patent would require us to alter our development or commercial strategies, alter our drugs or processes, obtain licenses or cease certain activities. Our breach of any license agreements or our failure to obtain a license to proprietary rights required to develop or commercialize our future products may have a material adverse impact on us. If third parties prepare and file patent applications in the United States that also claim technology to which we have rights, we may have to participate in interference or derivation proceedings in the USPTO to determine priority of invention. For more information, see the section titled “Risk factors–Risks related to our intellectual property.”

In addition to patent protection, we also rely on trade secrets, know-how, trademarks, other proprietary information and continuing technological innovation to develop and maintain our competitive position. Our trademark portfolio currently contains registration applications and/or registrations for Day One, Day One Biopharmaceuticals, and Cancer Drug Development Comes of Age in the United States. We seek to protect and maintain the confidentiality of proprietary information to protect aspects of our business that are not amenable to, or that we do not consider appropriate for, patent protection. Although we take steps to protect our proprietary information and trade secrets, including through contractual means with our employees and consultants, third parties may independently develop substantially equivalent proprietary information and techniques or otherwise gain access to our trade secrets or disclose our technology. Thus, we may not be able to meaningfully protect our trade secrets. It is our policy to require our employees, consultants, outside scientific collaborators, sponsored researchers and other advisors to execute confidentiality agreements upon the commencement of employment or consulting relationships with us. These agreements provide that all confidential information concerning our business or financial affairs developed or made known to the individual during the course of the individual’s relationship with us is to be kept confidential and not disclosed to third parties except in specific circumstances. Our agreements with employees also provide that all inventions conceived by the employee in the course of employment with us or from the employee’s use of our confidential information are our exclusive property. However, such confidentiality agreements and invention assignment agreements can be breached, and we may not have adequate remedies for any such breach. For more information regarding the risks related to our intellectual property, see “Risk factors–Risks related to our intellectual property.”

## Government regulation

Government authorities in the United States, at the federal, state and local level, and in other countries and jurisdictions extensively regulate, among other things, the research, development, testing, manufacture, quality control, approval, packaging, storage, recordkeeping, labeling, advertising, promotion, distribution, marketing, post-approval monitoring and reporting, and import and export of pharmaceutical products. The processes for obtaining regulatory approvals in the United States and in foreign countries and jurisdictions, along with subsequent compliance with applicable statutes and regulations and other regulatory authorities, require the expenditure of substantial time and financial resources.

### *FDA approval process*

In the United States, pharmaceutical products are subject to extensive regulation by the FDA, pursuant to the Federal Food, Drug, and Cosmetic Act, and other federal and state statutes and regulations that govern, among other things, the research, development, testing, manufacture, storage, recordkeeping, approval, labeling, promotion and marketing, distribution, post-approval monitoring and reporting, sampling and import and export of pharmaceutical products. Failure to comply with applicable U.S. requirements may subject a company to a variety of administrative or judicial sanctions, such as clinical hold, FDA refusal to approve pending NDAs, warning or untitled letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, fines, civil penalties and criminal prosecution.

Pharmaceutical product development for a new product or certain changes to an approved product in the U.S. typically involves preclinical laboratory and animal tests, the submission to FDA of an IND, which must become effective before clinical testing may commence, and adequate and well-controlled clinical trials to establish the safety and effectiveness of the drug for each indication for which FDA approval is sought. Satisfaction of FDA pre-market approval requirements typically takes many years and the actual time required may vary substantially based upon the type, complexity and novelty of the product or disease.

Preclinical tests include laboratory evaluation of product chemistry, formulation and toxicity, as well as animal trials to assess the characteristics and potential safety and efficacy of the product. The conduct of the preclinical tests must comply with federal regulations and requirements, including good laboratory practices. The results of preclinical testing are submitted to FDA as part of an IND along with other information, including information about product chemistry, manufacturing and controls, and a proposed clinical trial protocol. Long-term preclinical tests, such as animal tests of reproductive toxicity and carcinogenicity, may continue after the IND is submitted. A 30-day waiting period after the submission of each IND is required prior to the commencement of clinical testing in humans. If FDA has neither commented on nor questioned the IND within this 30-day period, the clinical trial proposed in the IND may begin. Clinical trials involve the administration of the investigational new drug to healthy volunteers or patients under the supervision of a qualified investigator. Clinical trials must be conducted: (i) in compliance with federal regulations; (ii) in compliance with Good Clinical Practice, or GCP, an international standard meant to protect the rights and health of patients and to define the roles of clinical trial sponsors, administrators and monitors; as well as (iii) under protocols detailing the objectives of the trial, the parameters to be used in monitoring safety and the effectiveness criteria to be evaluated. Each protocol involving testing on U.S. patients and subsequent protocol amendments must be submitted to FDA as part of the IND.

FDA may order the temporary, or permanent, discontinuation of a clinical trial at any time, or impose other sanctions, if it believes that the clinical trial either is not being conducted in accordance with FDA requirements or presents an unacceptable risk to the clinical trial patients. Imposition of a clinical hold may be full or partial. The study protocol and informed consent information for patients in clinical trials must also be submitted to an

institutional review board, or IRB, for approval. The IRB will also monitor the clinical trial until completed. An IRB may also require the clinical trial at the site to be halted, either temporarily or permanently, for failure to comply with the IRB's requirements, or may impose other conditions. Additionally, some clinical trials are overseen by an independent group of qualified experts organized by the clinical trial sponsor, known as a data safety monitoring board or committee. This group provides authorization for whether a trial may move forward at designated checkpoints based on access to certain data from the trial.

Clinical trials to support NDAs for marketing approval are typically conducted in three sequential phases, but the phases may overlap. In Phase 1, the initial introduction of the drug into healthy human subjects or patients, the drug is tested to assess metabolism, pharmacokinetics, pharmacological actions, side effects associated with increasing doses, and, if possible, early evidence of effectiveness. Phase 2 usually involves trials in a limited patient population to determine the effectiveness of the drug for a particular indication, dosage tolerance and optimum dosage, and to identify common adverse effects and safety risks. If a drug demonstrates evidence of effectiveness and an acceptable safety profile in Phase 2 evaluations, Phase 3 trials are undertaken to obtain the additional information about clinical efficacy and safety in a larger number of patients, typically at geographically dispersed clinical trial sites, to permit FDA to evaluate the overall benefit-risk relationship of the drug and to provide adequate information for the labeling of the drug. In most cases, FDA requires two adequate and well-controlled Phase 3 clinical trials to demonstrate the efficacy of the drug. A single trial may be sufficient in rare instances, including (1) where the study is a large multicenter trial demonstrating internal consistency and a statistically very persuasive finding of a clinically meaningful effect on mortality, irreversible morbidity or prevention of a disease with a potentially serious outcome and confirmation of the result in a second trial would be practically or ethically impossible or (2) when in conjunction with other confirmatory evidence.

These Phases may overlap or be combined. For example, a Phase 1/2 clinical trial may contain both a dose- escalation stage and a dose-expansion stage, the latter of which may confirm tolerability at the recommended dose for expansion in future clinical trials (as in traditional Phase 1 clinical trials) and provide insight into the anti-tumor effects of the investigational therapy in selected subpopulation(s). Typically, during the development of oncology therapies, all subjects enrolled in Phase 1 clinical trials are disease-affected patients and, as a result, considerably more information on clinical activity may be collected during such trials than during Phase 1 clinical trials for non-oncology therapies.

The manufacturer of an investigational drug in a Phase 2 or 3 clinical trial for a serious or life-threatening disease is required to make available, such as by posting on its website, its policy on evaluating and responding to requests for expanded access.

After completion of the required clinical testing, an NDA is prepared and submitted to FDA. FDA approval of the NDA is required before marketing of the product may begin in the U.S. The NDA must include the results of all preclinical, clinical and other testing and a compilation of data relating to the product's pharmacology, chemistry, manufacture and controls.

The cost of preparing and submitting an NDA is substantial. The submission of most NDAs is additionally subject to a substantial application user fee. Fee waivers or reductions are available in certain circumstances, including a waiver of the application fee for the first application filed by a small business. Additionally, no user fees are assessed on NDAs for products designated as orphan drugs, unless the product also includes a non-orphan indication. The applicant under an approved NDA is also subject to annual program fees. The FDA adjusts the user fees on an annual basis, and the fees typically increase annually.

FDA reviews each submitted NDA before it determines whether to file it, based on the agency's threshold determination that it is sufficiently complete to permit substantive review, and FDA may request additional information. The FDA must make a decision on whether to file an NDA within 60 days of receipt, and such

decision could include a refusal to file by the FDA. Once the submission is filed, FDA begins an in-depth review of the NDA. FDA has agreed to certain performance goals in the review of NDAs. Most applications for standard review drug products are reviewed within ten to twelve months; most applications for priority review drugs are reviewed in six to eight months. Priority review can be applied to drugs that FDA determines offer major advances in treatment or provide a treatment where no adequate therapy exists. The review process for both standard and priority review may be extended by FDA for three additional months to consider certain late- submitted information, or information intended to clarify information already provided in the submission. The FDA does not always meet its goal dates for standard and priority NDAs, and the review process can be extended by FDA requests for additional information or clarification.

FDA may also refer applications for novel drug products, or drug products that present difficult questions of safety or efficacy, to an outside advisory committee—typically a panel that includes clinicians and other experts—for review, evaluation and a recommendation as to whether the application should be approved and under what conditions, if any. FDA is not bound by the recommendation of an advisory committee, but it generally follows such recommendations.

Before approving an NDA, FDA will conduct a pre-approval inspection of the manufacturing facilities for the new product to determine whether they comply with cGMP requirements. FDA will not approve the product unless it determines that the manufacturing processes and facilities are in compliance with cGMP requirements and adequate to assure consistent production of the product within required specifications. The FDA also typically inspects one or more clinical trial sites to ensure compliance with GCP requirements and the integrity of the data supporting safety and efficacy.

After FDA evaluates the NDA and the manufacturing facilities, it issues either an approval letter or a complete response letter, or CRL. A CRL generally outlines the deficiencies in the submission and may require substantial additional testing, or information, in order for FDA to reconsider the application, such as additional clinical data, additional pivotal clinical trial(s), and/or other significant and time-consuming requirements related to clinical trials, preclinical studies or manufacturing. If a CRL is issued, the applicant may resubmit the NDA addressing all of the deficiencies identified in the letter, withdraw the application, engage in formal dispute resolution or request an opportunity for a hearing. FDA has committed to reviewing resubmissions in two or six months depending on the type of information included. Even if such data and information are submitted, the FDA may decide that the NDA does not satisfy the criteria for approval.

If, or when, the deficiencies identified in the CRL have been addressed to FDA's satisfaction in a resubmission of the NDA, FDA will issue an approval letter. An approval letter authorizes commercial marketing of the drug with specific prescribing information for specific indications. As a condition of NDA approval, FDA may require a risk evaluation and mitigation strategy, or REMS, to help ensure that the benefits of the drug outweigh the potential risks to patients. A REMS can include medication guides, communication plans for healthcare professionals, and elements to assure safe use, or ETASU. ETASU can include, but are not limited to, special training or certification for prescribing or dispensing, dispensing only under certain circumstances, special monitoring, and the use of patient registries. The requirement for a REMS can materially affect the potential market and profitability of the drug. Moreover, product approval may require substantial post-approval testing and surveillance to monitor the drug's safety or efficacy. Once granted, product approvals may be withdrawn if compliance with regulatory standards is not maintained or problems are identified following initial marketing.

Changes to some of the conditions established in an approved application, including changes in indications, labeling, or manufacturing processes or facilities, require submission and FDA approval of an NDA supplement or, in some case, a new NDA, before the change can be implemented. An NDA supplement for a new indication typically requires clinical data similar to that in the original application, and FDA uses the same procedures and actions in reviewing NDA supplements as it does in reviewing NDAs.

***Disclosure of clinical trial information***

Sponsors of clinical trials of FDA regulated products, including drugs, are required to register and disclose certain clinical trial information. Information related to the product, patient population, phase of investigation, study sites and investigators, and other aspects of the clinical trial is then made public as part of the registration. Sponsors are also obligated to discuss the results of their clinical trials after completion. Disclosure of the results of these trials can be delayed in certain circumstances for up to two years after the date of completion of the trial. Competitors may use this publicly available information to gain knowledge regarding the progress of development programs.

***Orphan drugs***

Under the Orphan Drug Act, 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 but for which there is no reasonable expectation that the cost of developing and making the product for this type of disease or condition will be recovered from sales of the product in the United States.

Orphan drug designation must be requested before submitting an NDA. After FDA grants orphan drug designation, the identity of the drug and its potential orphan use are disclosed publicly by FDA. Orphan drug designation does not convey any advantage in, or shorten the duration of, the regulatory review and approval process.

The first NDA applicant to receive FDA approval for a particular active moiety to treat a rare disease for which it has such designation is entitled to a seven-year exclusive marketing period in the U.S. for that product, for that indication. During the seven-year exclusivity period, FDA may not approve any other applications to market the same drug for the same disease, except in limited circumstances, such as a showing of clinical superiority to the product with orphan drug exclusivity by means of greater effectiveness, greater safety, or providing a major contribution to patient care, or in instances of drug supply issues. Orphan drug exclusivity does not prevent FDA from approving a different drug for the same disease or condition, or the same drug for a different disease or condition. Other benefits of orphan drug designation include tax credits for certain research and an exemption from the NDA user fee.

***Breakthrough therapy designation***

FDA is also required to expedite the development and review of applications for approval of drugs that are intended to treat a serious or life-threatening disease or condition where preliminary clinical evidence indicates that the drug may demonstrate substantial improvement over existing therapies on one or more clinically significant endpoints. Under the breakthrough therapy program, the sponsor of a new product candidate may request that FDA designate the product candidate for a specific indication as a breakthrough therapy concurrent with, or after, the filing of the IND for the product candidate. FDA must determine if the product candidate qualifies for Breakthrough Therapy designation within 60 days of receipt of the sponsor’s request. 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 studies in an efficient manner.

***Accelerated approval***

Accelerated approval may be granted for a product that is intended to treat a serious or life-threatening condition and that generally provides a meaningful therapeutic advantage to patients over existing treatments. A product eligible for accelerated approval may be approved on the basis of either a surrogate endpoint that is reasonably likely to predict clinical benefit, or on a clinical endpoint that can be measured earlier than irreversible morbidity or mortality, 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. The accelerated approval pathway is most often used in settings in which the course of a disease is long, and an extended period of time is required to measure the intended clinical benefit of a product, even if the effect on the surrogate or intermediate clinical endpoint occurs rapidly. Thus, accelerated approval has been used extensively in the development and approval of products for treatment of a variety of cancers in which the goal of therapy is generally to improve survival or decrease morbidity and the duration of the typical disease course requires lengthy and sometimes large studies to demonstrate a clinical or survival benefit. The accelerated approval pathway is contingent on a sponsor's agreement to conduct additional post-approval confirmatory studies to verify and describe the product's clinical benefit. These confirmatory trials must be completed with due diligence and, in most cases, the FDA may require that the trial be designed, initiated, and/or fully enrolled prior to approval. Failure to conduct required post-approval studies, or to confirm a clinical benefit during post-marketing studies, would allow the FDA to withdraw the product from the market on an expedited basis. All promotional materials for product candidates approved under accelerated regulations are subject to prior review by the FDA.

***Pediatric information***

Under the Pediatric Research Equity Act, or PREA, NDAs or supplements to NDAs must contain data to assess the safety and effectiveness of the drug for the claimed indications in all relevant pediatric subpopulations and to support dosing and administration for each pediatric subpopulation for which the drug is safe and effective. FDA may grant full or partial waivers, or deferrals, for submission of data. Unless otherwise required by regulation, PREA does not apply to any drug for an indication for which orphan designation has been granted except that PREA will apply to an original NDA for a new active ingredient that is orphan-designated if the drug is a molecularly targeted cancer product intended for the treatment of an adult cancer and is directed at a molecular target that FDA determines to be substantially relevant to the growth or progression of a pediatric cancer.

The Best Pharmaceuticals for Children Act, or BPCA, provides NDA holders a six-month extension of any exclusivity—patent or nonpatent—for a drug if certain conditions are met. Conditions for exclusivity include FDA's determination that information relating to the use of a new drug in the pediatric population may produce health benefits in that population, FDA making a written request for pediatric studies, and the applicant agreeing to perform, and reporting on, the requested studies within the statutory timeframe. Applications under the BPCA are treated as priority applications, with all of the benefits that designation confers.

***Post-Approval requirements***

Once an NDA is approved, a product will be subject to certain post-approval requirements. For instance, FDA closely regulates the post-approval marketing and promotion of drugs, including standards and regulations for direct-to-consumer advertising, off-label promotion, industry-sponsored scientific and educational activities and promotional activities involving the internet. Drugs may be marketed only for the approved indications and in a manner consistent with the approved labeling.

Adverse event reporting and submission of periodic reports are required following FDA approval of an NDA. FDA also may require post-marketing testing, known as Phase 4 testing, REMS, and surveillance to monitor the effects of an approved product, or FDA may place conditions on an approval that could restrict the distribution or use of the product. In addition, quality control, drug manufacture, packaging and labeling procedures must continue to conform to current good manufacturing practices, or cGMPs, after approval. Drug manufacturers and certain of their subcontractors are required to register their establishments with FDA and certain state agencies. Registration with FDA subjects entities to periodic unannounced inspections by FDA, during which the Agency inspects manufacturing facilities to assess compliance with cGMPs. Accordingly, manufacturers must continue to expend time, money and effort in the areas of production and quality-control to maintain compliance with cGMPs. Regulatory authorities may withdraw product approvals or request product recalls if a company fails to comply with regulatory standards, if it encounters problems following initial marketing, or if previously unrecognized problems are subsequently discovered.

***Rare pediatric disease designation and priority review vouchers***

Under the Rare Pediatric Disease Priority Review Voucher program, FDA may award a priority review voucher to the sponsor of an approved marketing application for a product that treats or prevents a rare pediatric disease. The voucher entitles the sponsor to priority review of one subsequent marketing application. A voucher may be awarded only for an approved rare pediatric disease product application. A rare pediatric disease product application is an NDA for a drug (in the case of a small molecule) that treats or prevents a serious or life-threatening disease in which the serious or life-threatening manifestations primarily affect individuals aged from birth to 18 years; in general, the disease must affect fewer than 200,000 such individuals in the U.S.; the NDA must be deemed eligible for priority review; the NDA must not seek approval for a different adult indication (i.e., for a different disease/condition); the drug must not contain an active ingredient that has been previously approved by FDA; and the NDA must rely on clinical data derived from studies examining a pediatric population such that the approved product can be adequately labeled for the pediatric population. Before NDA approval, FDA may designate a product in development as a product for a rare pediatric disease.

To receive a rare pediatric disease priority review voucher, a sponsor must notify FDA, upon submission of the NDA, of its intent to request a voucher. If FDA determines that the NDA is a rare pediatric disease product application, and if the NDA is approved, FDA will award the sponsor of the NDA a voucher upon approval of the NDA. FDA may revoke a rare pediatric disease priority review voucher if the product for which it was awarded is not marketed in the U.S. within 365 days of the product's approval. The voucher, which is transferable to another sponsor, may be submitted with a subsequent NDA or biologics license application, or BLA, and entitles the holder to priority review of the accompanying NDA or BLA. The sponsor submitting the priority review voucher must notify FDA of its intent to submit the voucher with the NDA or BLA at least 90 days prior to submission of the NDA or BLA and must pay a priority review user fee in addition to any other required user fee. FDA must take action on an NDA or BLA under priority review within six months of receipt of the NDA or BLA.

In December 2020, the this program was reauthorized, allowing a product that is designated as a product for a rare pediatric disease prior to September 30, 2024 to be eligible to receive a rare pediatric disease priority review voucher upon approval of a qualifying NDA prior to September 30, 2026.

***The Hatch-Waxman amendments***

*Orange Book Listing*

Under the Drug Price Competition and Patent Term Restoration Act of 1984, commonly referred to as the Hatch Waxman Amendments, NDA applicants are required to identify to FDA each patent whose claims cover

the applicant's drug or approved method of using the drug. Upon approval of a drug, the applicant must update its listing of patents to the NDA in timely fashion and each of the patents listed in the application for the drug is then published in the FDA's Approved Drug Products with Therapeutic Equivalence Evaluations, commonly known as the Orange Book.

Drugs listed in the Orange Book can, in turn, be cited by potential generic competitors in support of approval of an abbreviated new drug application, or ANDA. An ANDA provides for marketing of a drug product that has the same active ingredient(s), strength, route of administration, and dosage form as the listed drug and has been shown through bioequivalence testing to be therapeutically equivalent to the listed drug. An approved ANDA product is considered to be therapeutically equivalent to the listed drug. Other than the requirement for bioequivalence testing, ANDA applicants are not required to conduct, or submit results of, pre-clinical or clinical tests to prove the safety or effectiveness of their drug product. Drugs approved under the ANDA pathway are commonly referred to as "generic equivalents" to the listed drug and can often be substituted by pharmacists under prescriptions written for the original listed drug pursuant to each state's laws on drug substitution.

The ANDA applicant is required to certify to the FDA concerning any patents identified for the reference listed drug in the Orange Book. Specifically, the applicant must certify to each patent in one of the following ways: (i) the required patent information has not been filed; (ii) the listed patent has expired; (iii) the listed patent has not expired but will expire on a particular date and approval is sought after patent expiration; or (iv) the listed patent is invalid or will not be infringed by the new product. A certification that the new product will not infringe the already approved product's listed patents, or that such patents are invalid, is called a Paragraph IV certification. For patents listed that claim an approved method of use, under certain circumstances the ANDA applicant may also elect to submit a section viii statement certifying that its proposed ANDA label does not contain (or carves out) any language regarding the patented method-of-use rather than certify to a listed method- of-use patent. If the applicant does not challenge the listed patents through a Paragraph IV certification, the ANDA application will not be approved until all the listed patents claiming the referenced product have expired. If the ANDA applicant has provided a Paragraph IV certification to the FDA, the applicant must also send notice of the Paragraph IV certification to the NDA-holder and patentee(s) once the ANDA has been accepted for filing by the FDA (referred to as the "notice letter"). The NDA and patent holders may then initiate a patent infringement lawsuit in response to the notice letter. The filing of a patent infringement lawsuit within 45 days of the receipt of a Paragraph IV certification automatically prevents the FDA from approving the ANDA until the earlier of 30 months from the date the notice letter is received, expiration of the patent, the date of a settlement order or consent decree signed and entered by the court stating that the patent that is the subject of the certification is invalid or not infringed, or a decision in the patent case that is favorable to the ANDA applicant.

The ANDA application also will not be approved until any applicable non-patent exclusivity listed in the Orange Book for the referenced product has expired. In some instances, an ANDA applicant may receive approval prior to expiration of certain non-patent exclusivity if the applicant seeks, and FDA permits, the omission of such exclusivity-protected information from the ANDA prescribing information.

*Exclusivity*

Upon NDA approval of a new chemical entity, or NCE, which is a drug that contains no active moiety that has been approved by FDA in any other NDA, that drug receives five years of marketing exclusivity during which FDA cannot receive any ANDA seeking approval of a generic version of that drug unless the application contains a Paragraph IV certification, in which case the application may be submitted one year prior to expiration of the NCE exclusivity. If there is no listed patent in the Orange Book, there may not be a Paragraph IV certification, and, thus, no ANDA for a generic version of the drug may be filed before the expiration of the exclusivity period.

Certain changes to an approved drug, such as the approval of a new indication, the approval of a new strength, and the approval of a new condition of use, are associated with a three-year period of exclusivity from the date of approval during which FDA cannot approve an ANDA for a generic drug that includes the change. In some instances, an ANDA applicant may receive approval prior to expiration of the three-year exclusivity if the applicant seeks, and FDA permits, the omission of such exclusivity-protected information from the ANDA package insert.

*Patent term extension*

The Hatch Waxman Amendments permit a patent term extension as compensation for patent term lost during the FDA regulatory review process. Patent term extension, however, cannot extend the remaining term of a patent beyond a total of 14 years from the product's approval date. After NDA approval, owners of relevant drug patents may apply for the extension. The allowable patent term extension is calculated as half of the drug's testing phase (the time between IND application and NDA submission) and all of the review phase (the time between NDA submission and approval) up to a maximum of five years. The time can be reduced for any time FDA determines that the applicant did not pursue approval with due diligence.

The USPTO, in consultation with the FDA, reviews and approves the application for any patent term extension or restoration. However, the USPTO may not grant an extension because of, for example, failing to exercise due diligence during the testing phase or regulatory review process, failing to apply within applicable deadlines, failing to apply prior to expiration of relevant patents or otherwise failing to satisfy applicable requirements. Moreover, the applicable time period or the scope of patent protection afforded could be less than requested.

The total patent term after the extension may not exceed 14 years, and only one patent can be extended. The application for the extension must be submitted prior to the expiration of the patent, and for patents that might expire during the application phase, the patent owner may request an interim patent extension. An interim patent extension increases the patent term by one year and may be renewed up to four times. For each interim patent extension granted, the post-approval patent extension is reduced by one year. The director of the USPTO must determine that approval of the drug covered by the patent for which a patent extension is being sought is likely. Interim patent extensions are not available for a drug for which an NDA has not been submitted.

***FDA regulation of companion diagnostics***

If use of an in vitro diagnostic is essential to safe and effective use of a drug product, then the FDA generally will require approval or clearance of the diagnostic, known as a companion diagnostic, at the same time that the FDA approves the drug product. FDA has generally required in vitro companion diagnostics intended to select the patients who will respond to cancer treatment to obtain a pre-market approval, or PMA, for that diagnostic simultaneously with approval of the drug. The review of these in vitro companion diagnostics in conjunction with the review of a cancer therapeutic involves coordination of review by the FDA's Center for Drug Evaluation and Research and by the FDA's Center for Devices and Radiological Health. Approval and clearance of a companion diagnostic also requires a high level of coordination between the drug manufacturer and device manufacturer, if different companies.

The PMA process, including the gathering of clinical and preclinical data and the submission to and review by the FDA, can take several years or longer. It involves a rigorous premarket review during which the applicant must prepare and provide the FDA with reasonable assurance of the device's safety and effectiveness and information about the device and its components regarding, among other things, device design, manufacturing and labeling. PMA applications are subject to a substantial application fee, which is typically increased annually.

In addition, PMAs must generally include the results from extensive preclinical and adequate and well-controlled clinical trials to establish the safety and effectiveness of the device for each indication for which FDA

approval is sought. In particular, for a diagnostic, the applicant must demonstrate that the diagnostic has adequate sensitivity and specificity, has adequate specimen and reagent stability, and produces reproducible results when the same sample is tested multiple times by multiple users at multiple laboratories. As part of the PMA review, the FDA will typically inspect the manufacturer's facilities for compliance with the Quality System Regulation, or QSR, which imposes elaborate testing, control, documentation and other quality assurance requirements.

PMA approval is not guaranteed, and the FDA may ultimately respond to a PMA submission with a not approvable determination based on deficiencies in the application and require additional clinical trial or other data that may be expensive and time-consuming to generate and that can substantially delay approval. If the FDA's evaluation of the PMA application is favorable, the FDA typically issues an approvable letter requiring the applicant's agreement to specific conditions, such as changes in labeling, or specific additional information, such as submission of final labeling, in order to secure final approval of the PMA. If the FDA concludes that the applicable criteria have been met, the FDA will issue a PMA for the approved indications, which can be more limited than those originally sought by the applicant. The PMA can include post-approval conditions that the FDA believes necessary to ensure the safety and effectiveness of the device, including, among other things, restrictions on labeling, promotion, sale and distribution.

After a device is placed on the market, it remains subject to significant regulatory requirements. Medical devices may be marketed only for the uses and indications for which they are cleared or approved. Device manufacturers must also register their establishment(s), including payment of an annual establishment registration fee, and list their device(s) with the FDA. A medical device manufacturer's manufacturing processes and those of its suppliers are required to comply with the applicable portions of the QSR, which cover the methods and documentation of the design, testing, production, processes, controls, quality assurance, labeling, packaging and shipping of medical devices. Domestic facility records and manufacturing processes are subject to periodic unscheduled inspections by the FDA. The FDA also may inspect foreign facilities that export products to the United States.

***Other healthcare laws***

In addition to FDA restrictions on marketing of pharmaceutical products, several other types of state and federal laws have been applied to restrict certain general business and marketing practices in the pharmaceutical industry. These laws include anti-kickback, false claims, transparency and health information privacy laws and other healthcare laws and regulations.

The federal 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 reimbursable under Medicare, Medicaid, or other federally financed healthcare programs. The Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act, collectively, the ACA, amended the intent element of the federal Anti-Kickback Statute so that a person or entity no longer needs to have actual knowledge of the statute or specific intent to violate it in order to commit a violation. This statute has been interpreted to apply to arrangements between pharmaceutical manufacturers on the one hand and prescribers, purchasers and formulary managers, among others, on the other. Although there are a number of statutory exceptions and regulatory safe harbors protecting certain common activities from prosecution or other regulatory sanctions, the exceptions and safe harbors are drawn narrowly, and practices that involve remuneration intended to induce prescribing, purchases or recommendations may be subject to scrutiny if they do not qualify for an exception or safe harbor. Additionally, the ACA amended the federal Anti-Kickback Statute such that a violation of that statute can serve as a basis for liability under the federal civil False Claims Act.

Federal civil and criminal false claims laws, including the federal civil False Claims Act, prohibit any person or entity 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 have a false claim paid. This includes claims made to programs where the federal government reimburses, such as Medicare and Medicaid, as well as programs where the federal government is a direct purchaser, such as when it purchases off the Federal Supply Schedule. Pharmaceutical and other healthcare companies have been prosecuted under these laws for, among other things, allegedly inflating drug prices they report to pricing services, which in turn were used by the government to set Medicare and Medicaid reimbursement rates, and for allegedly providing free product to customers with the expectation that the customers would bill federal programs for the product. In addition, certain marketing practices, including off-label promotion, may also violate false claims laws. Most states also have statutes or regulations similar to the federal Anti-Kickback Statute and civil False Claims Act, which apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payor.

Other federal statutes pertaining to healthcare fraud and abuse include the civil monetary penalties statute, which prohibits, among other things, the offer or payment of remuneration to a Medicaid or Medicare beneficiary that the offeror or payor knows or should know is likely to influence the beneficiary to order a receive a reimbursable item or service from a particular supplier, and the additional federal criminal statutes created by the Health Insurance Portability and Accountability Act of 1996, or HIPAA, which prohibit, among other things, knowingly and willfully executing or attempting to execute a scheme to defraud any healthcare benefit program or obtain by means of false or fraudulent pretenses, representations or promises any money or property owned by or under the control of any healthcare benefit program in connection with the delivery of or payment for healthcare benefits, items or services.

In addition, HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, or HITECH, and their respective implementing regulations, including the Final Omnibus Rule published on January 25, 2013, impose obligations on certain healthcare providers, health plans, and healthcare clearinghouses, known as covered entities, as well as their business associates and their subcontractors that perform certain services involving the storage, use or disclosure of individually identifiable health information, including mandatory contractual terms, with respect to safeguarding the privacy, security, and transmission of individually identifiable health information, and require notification to affected individuals and regulatory authorities of certain breaches of security of individually identifiable health information. HITECH increased the civil and criminal penalties that may be imposed against covered entities, business associates and possibly other persons, and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce the federal HIPAA laws and seek attorney’s fees and costs associated with pursuing federal civil actions. In addition, many state laws govern the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and may not have the same effect, and often are not pre-empted by HIPAA.

Further, pursuant to the ACA, the Centers for Medicare & Medicaid Services, or CMS, issued a final rule that requires certain manufacturers of prescription drugs to collect and annually report information on certain payments or transfers of value to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors) and teaching hospitals, as well as ownership and investment interests held by physicians and their immediate family members. Beginning calendar year 2021, manufacturers must collect information regarding payments and other transfers of value to physician assistants, nurse practitioners, clinical nurse specialists, anesthesiologist assistants, certified registered nurse anesthetists, and certified nurse-midwives for reporting in the following year. The reported data is made available in searchable form on a public website on an annual basis. Failure to submit required information may result in civil monetary penalties.

We may also be subject to analogous state and foreign anti-kickback and false claims laws that may apply to sales or marketing arrangements and claims involving healthcare items or services reimbursed by non- governmental third-party payors, including private insurers, or that apply regardless of payor. In addition, several states now require prescription drug companies to report certain expenses relating to the marketing and promotion of drug products and to report gifts and payments to individual healthcare practitioners in these states. Other states prohibit various marketing-related activities, such as the provision of certain kinds of gifts or meals. Further, certain states require the posting of information relating to clinical studies and their outcomes. Some states require the reporting of certain drug pricing information, including information pertaining to and justifying price increases. In addition, certain states require pharmaceutical companies to implement compliance programs and/or marketing codes. Several additional states are considering similar proposals. Certain states and local jurisdictions also require the registration of pharmaceutical sales representatives. Additionally, we may also be subject to state and foreign laws governing the privacy and security of health information in some circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts.

Efforts to ensure that business arrangements with third parties comply with applicable state, federal, and foreign healthcare laws and regulations involve substantial costs. If a drug company's operations are found to be in violation of any such requirements, it may be subject to significant penalties, including civil, criminal and administrative penalties, damages, fines, disgorgement, imprisonment, the curtailment or restructuring of its operations, loss of eligibility to obtain approvals from the FDA, exclusion from participation in government contracting, healthcare reimbursement or other federal or state government healthcare programs, including Medicare and Medicaid, integrity oversight and reporting obligations, imprisonment, and reputational harm. Although effective compliance programs can mitigate the risk of investigation and prosecution for violations of these laws, these risks cannot be entirely eliminated. Any action for an alleged or suspected violation can cause a drug company to incur significant legal expenses and divert management's attention from the operation of the business, even if such action is successfully defended.

***U.S. healthcare reform***

In the United States there have been, and continue to be, proposals by the federal government, state governments, regulators and third-party payors to control or manage the increased costs of health care and, more generally, to reform the U.S. healthcare system. The pharmaceutical industry has been a particular focus of these efforts and has been significantly affected by major legislative initiatives. For example, in March 2010, the ACA was enacted, which intended to broaden access to health insurance, reduce or constrain the growth of healthcare spending, enhance remedies against fraud and abuse, add new transparency requirements for the healthcare and health insurance industries, impose new taxes and fees on the health industry and impose additional health policy reforms, substantially changed the way healthcare is financed by both governmental and private insurers, and significantly impacts the U.S. pharmaceutical industry. The ACA, among other things, (i) subjected therapeutic biologics to potential competition by lower-cost biosimilars by creating a licensure framework for follow-on biologic products, (ii) prescribed a new methodology by which rebates owed by manufacturers under the Medicaid Drug Rebate Program are calculated for drugs and therapeutic biologics that are inhaled, infused, instilled, implanted or injected, (iii) increased the minimum Medicaid rebates owed by manufacturers under the Medicaid Drug Rebate Program and extended the rebate program to individuals enrolled in Medicaid managed care organizations, (iv) established annual nondeductible fees and taxes on manufacturers of certain branded prescription drugs and therapeutic biologics, apportioned among these entities according to their market share in certain government healthcare programs (v) established a new Medicare Part D coverage gap discount program, in which manufacturers must agree to offer 50% (now 70%) point of-sale discounts off negotiated prices of applicable brand drugs and therapeutic biologics to eligible beneficiaries during their coverage gap period, as a condition for the manufacturer's outpatient drugs and

therapeutic biologics to be covered under Medicare Part D, (vi) expanded eligibility criteria for Medicaid programs by, among other things, allowing states to offer Medicaid coverage to additional individuals and by adding new mandatory eligibility categories for individuals with income at or below 133% of the federal poverty level, thereby potentially increasing manufacturers' Medicaid rebate liability, (vii) expanded the entities eligible for discounts under the Public Health program (viii) created a new Patient-Centered Outcomes Research Institute to oversee, identify priorities in, and conduct comparative clinical effectiveness research, along with funding for such research, and (ix) established a Center for Medicare and Medicaid Innovation at CMS to test innovative payment and service delivery models to lower Medicare and Medicaid spending, potentially including prescription drug spending.

There have been executive, legislative and judicial efforts to modify, repeal, or otherwise invalidate all, or certain provisions of, the ACA. For example, the Tax Cuts and Jobs Act, among other things, included a provision that repealed, effective January 1, 2019, the tax-based shared responsibility payment imposed by the ACA on certain individuals who fail to maintain qualifying health coverage for all or part of a year that is commonly referred to as the "individual mandate." In November 2020, the United States Supreme Court held oral arguments on the U.S. Court of Appeals for the Fifth Circuit's decision that held that the individual mandate is unconstitutional. On February 10, 2021, the Biden administration withdrew the federal government's support for overturning the ACA. Further, although the Supreme Court has not yet ruled on the constitutionality of the ACA, on January 28, 2021, President Biden issued an executive order to initiate a special enrollment period for purposes of obtaining health insurance coverage through the ACA marketplace, which began on February 15, 2021 and will remain open through August 15, 2021. The executive order also instructs certain governmental agencies to review and reconsider their existing policies and rules that limit access to healthcare, including among others, reexamining Medicaid demonstration projects and waiver programs that include work requirements, and policies that create unnecessary barriers to obtaining access to health insurance coverage through Medicaid or the ACA. It is uncertain how the United States Supreme court ruling, other such litigation case or how the healthcare measures of the Biden administration will impact the ACA and our business.

Other legislative changes have been proposed and adopted in the United States since the ACA was enacted to reduce healthcare expenditures. United States federal government agencies also currently face potentially significant spending reductions, which may further impact healthcare expenditures. On August 2, 2011, the Budget Control Act of 2011 among other things, created measures for spending reductions by Congress. A Joint Select Committee on Deficit Reduction, tasked with recommending a targeted deficit reduction of at least $1.2 trillion for the years 2013 through 2021, was unable to reach required goals, thereby triggering the legislation's automatic reduction to several government programs. This includes aggregate reductions of Medicare payments to providers of 2% per fiscal year. These reductions went into effect on April 1, 2013 and, due to subsequent legislative amendments to the statute, including the BBA, will remain in effect through 2030, with the exception of a temporary suspension from May 1, 2020 through December 31, 2021 due to the COVID-19 pandemic, unless additional Congressional action is taken. Moreover, on January 2, 2013, the American Taxpayer Relief Act of 2012 was signed into law, which, among other things, further reduced Medicare payments to several types of providers, including hospitals, imaging centers and cancer treatment centers, and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. If federal spending is further reduced, anticipated budgetary shortfalls may also impact the ability of relevant agencies, such as the FDA or the National Institutes of Health to continue to function at current levels. Amounts allocated to federal grants and contracts may be reduced or eliminated. These reductions may also impact the ability of relevant agencies to timely review and approve research and development, manufacturing, and marketing activities, which may delay our ability to develop, market and sell any products we may develop.

Recently, there has been heightened governmental scrutiny over the manner in which manufacturers set prices for their marketed products, which has resulted in several presidential executive orders, Congressional inquiries and proposed and enacted federal and state legislation designed to, among other things, bring more transparency to product pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for drug products. At the federal level, the administration of the former president of the United States used several means to propose or implement drug pricing reform, including through federal budget proposals, executive orders and policy initiatives. For example, on July 24, 2020 and September 13, 2020, the administration of the former president of the United States announced several executive orders related to prescription drug pricing that seek to implement several of the administration's proposals. As a result, the FDA also released a final rule on September 24, 2020 providing guidance for states to build and submit importation plans for drugs from Canada. The current and former presidential administrations both issued executive orders intended to favor government procurement from domestic manufacturers. In addition, the Trump administration issued an executive order specifically aimed at the procurement of pharmaceutical products, which instructed the federal government to develop a list of "essential" medicines and then buy those and other medical supplies that are manufactured, including the manufacture of the API, in the United States. It is unclear whether this executive order or something similar will be implemented by the Biden Administration.

Further, on November 20, 2020, the U.S Department of Health and Human Services finalized a regulation removing safe harbor protection for price reductions from pharmaceutical manufacturers to plan sponsors under Part D, either directly or through pharmacy benefit managers, unless the price reduction is required by law. The implementation of the rule has been delayed by the Biden administration from January 1, 2022 to January 1, 2023 in response to ongoing litigation. The rule also creates a new safe harbor for price reductions reflected at the point-of-sale, as well as a safe harbor for certain fixed fee arrangements between pharmacy benefit managers and manufacturers, the implementation of which have also been delayed by the Biden administration until January 1, 2023. CMS also published an interim final rule that establishes a Most Favored Nation, or MFN, Model for Medicare Part B drug payment. This regulation would substantially change the drug reimbursement landscape as it bases Medicare Part B payment for 50 selected drugs on prices in foreign countries instead of average sales price, or ASP, and establishes a fixed add-on payment in place of the current 6% (4.3% after sequestration) of ASP. The MFN drug payment amount is expected to be lower than the current ASP-based limit because U.S. drug prices are generally the highest in the world. On December 28, 2020, the United States District Court in Northern California issued a nationwide preliminary injunction against implementation of the interim final rule, and it faces uncertain prospects for implementation. Additionally, on March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 into law, which eliminates the statutory Medicaid drug rebate cap, currently set at 100% of a drug's average manufacturer price, for single source and innovator multiple source drugs, beginning January 1, 2024.

At the state level, legislatures are increasingly passing legislation and implementing regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures, and, in some cases, designed to encourage importation from other countries and bulk purchasing.

We expect that additional state and federal healthcare reform measures will be adopted in the future. Further, it is possible that additional governmental action is taken in response to the COVID-19 pandemic.

***Coverage and reimbursement***

Patients in the United States and elsewhere generally rely on third-party payors to reimburse part or all of the costs associated with their prescription drugs. Accordingly, market acceptance of our drug products is

dependent on the extent to which third-party coverage and reimbursement is available from government health administration authorities (including in connection with government healthcare programs, such as Medicare and Medicaid in the United States), private healthcare insurers and other healthcare funding organizations. Significant uncertainty exists as to the coverage and reimbursement status of any drug products for which we may obtain regulatory approval. Coverage decisions may not favor new drug products when more established or lower-cost therapeutic alternatives are already available. Patients are unlikely to use our products unless reimbursement is adequate to cover all or a significant portion of the cost of our drug products.

Coverage and reimbursement policies for drug products can differ significantly from payor to payor as there is no uniform policy of coverage and reimbursement for drug products among third-party payors in the United States. There may be significant delays in obtaining coverage and reimbursement as the process of determining coverage and reimbursement is often time-consuming and costly which will require us to provide scientific and clinical support for the use of our products to each payor separately, with no assurance that coverage or adequate reimbursement will be obtained. It is difficult to predict at this time what government authorities and third-party payors will decide with respect to coverage and reimbursement for our drug products. Additionally, we may develop, either by ourselves or with collaborators, companion diagnostic tests for our product candidates for certain indications. We, or our collaborators, if any, will be required to obtain coverage and reimbursement for these tests separate and apart from the coverage and reimbursement we seek for our product candidates, once approved.

The market for our product candidates will depend significantly on access to third-party payors' drug formularies or lists of medications for which third-party payors provide coverage and reimbursement. Competition to be included in such formularies often leads to downward pricing pressures. In particular, third- party payors may refuse to include a particular reference listed drug in their formularies or otherwise restrict patient access to a reference listed drug when a less costly generic equivalent or other alternative is available.

The U.S. government, state legislatures and foreign governmental entities have shown significant interest in implementing cost containment programs to limit the growth of government-paid healthcare costs, including price controls, restrictions on reimbursement and coverage and requirements for substitution of generic products for branded prescription drugs. Adoption of government controls and measures and tightening of restrictive policies in jurisdictions with existing controls and measures, could exclude or limit our drugs products from coverage and limit payments for pharmaceuticals.

In addition, we expect that the increased emphasis on managed care and cost containment measures in the United States by third-party payors and government authorities to continue and will place pressure on pharmaceutical pricing and coverage. Coverage policies and third-party reimbursement rates may change at any time. Even if favorable coverage and reimbursement status is attained for one or more drug products for which we receive regulatory approval, less favorable coverage policies and reimbursement rates may be implemented in the future.

## Employees and human capital resources

As of March 31, 2021, we had 20 full-time employees. Of these employees, 10 held Ph.D., Pharm.D. or M.D. degrees, and 12 were engaged in research, development and technical operations. From time to time, we also retain independent contractors to support our organization. All of our employees are based at our headquarters in South San Francisco, California. None of our employees are represented by a labor union or covered by collective bargaining agreements, and we believe our relationship with our employees is good.

Our human capital resources objectives include, as applicable, identifying, recruiting, retaining, incentivizing and integrating our existing and additional employees. The principal purpose of our incentive share plan is to

attract, retain and motivate selected employees, consultants and directors through the granting of incentive share-based compensation awards and cash-based performance bonus awards.

## Facilities

Our principal executive office is located in South San Francisco, California, where we lease a total of 4,759 square feet of office space. The lease is expected to expire in February 2023, subject to our option to extend the lease by three additional years. We believe these facilities are sufficient to meet our ongoing needs and that, if we require additional space, we will be able to obtain additional facilities on commercially reasonable terms.

## Legal proceedings

From time to time, we may be involved in legal proceedings arising in the ordinary course of our business. We are not presently a party to any legal proceedings that, in the opinion of management, would have a material adverse effect on our business. Regardless of outcome, litigation can have an adverse impact on us due to defense and settlement costs, diversion of management resources, negative publicity and reputational harm, and other factors.

# Management

## Executive officers and directors

The following table and discussion sets forth the name, age as of March 15, 2021, and position of the individuals who currently serve as directors and executive officers of Day One LLC and will begin to serve as the directors and executive officers of Day One Biopharmaceuticals, Inc. upon our conversion from a Delaware limited liability company to a Delaware corporation in connection with this offering.

| Name | Age | Position |
|---|---|---|
| ***Executive officers:*** | | |
| Jeremy Bender, Ph.D., M.B.A. | 49 | Chief Executive Officer, President and Director |
| Charles York II, M.B.A. | 44 | Chief Operating Officer, Chief Financial Officer and Secretary |
| Samuel Blackman, M.D., Ph.D. | 52 | Chief Medical Officer and Co-Founder |
| ***Non-employee directors:*** | | |
| Julie Grant, M.Phil., M.B.A. | 38 | Chair of the Board, Director and Co-Founder |
| Dan Becker, M.D., Ph.D.(1)(2) | 45 | Director |
| Derek DiRocco, Ph.D.(4) | 40 | Director |
| Michael Gladstone(2)(3) | 34 | Director |
| Natalie Holles(1)(3) | 48 | Lead Independent Director |
| John Josey, Ph.D., M.B.A.(1)(3) | 60 | Director |
| Saira Ramasastry, M.S., M.Phil.(2) | 45 | Director |

(1) Member of the Compensation Committee.

(2) Member of the Audit Committee.

(3) Member of the Nominating and Governance Committee.

(4) Dr. DiRocco has notified us that he will resign from our board of directors effective immediately prior to the Conversion and the effectiveness of the registration statement of which this prospectus forms a part.

### *Executive officers*

**Jeremy Bender, Ph.D., M.B.A.** has served as our Chief Executive Officer, President and a member of our board of directors since September 2020. Prior to joining Day One, Dr. Bender was Vice President of Corporate Development at Gilead Sciences, a pharmaceutical company, from March 2018 to September 2020. Prior to that, he was Chief Operating Officer of Tizona Therapeutics from July 2015 to March 2018 and Chief Business Officer of Sutro Biopharma, a biotechnology company specializing in cancer and autoimmune therapeutics, from October 2012 to July 2015. Prior to joining Sutro Biopharma, he was Vice President of Corporate Development at Allos Therapeutics, a biotechnology company focused on cancer treatments, from January 2006 to September 2012. Dr. Bender began his career in the life sciences practice at Boston Consulting Group, a management consulting company. Dr. Bender also sits on the board of Mereo BioPharma as an independent board member. Dr. Bender holds a B.S. in Biological Sciences from Stanford University, a Ph.D. in Microbiology and Immunology from the University of Colorado, and an M.B.A. from the MIT Sloan School of Management. We believe that Dr. Bender's experience as our Chief Executive Officer and President and history of leadership in the biopharmaceutical field qualifies him to serve on our board of directors.

**Charles York II**, M.B.A., has served as our Chief Operating Officer and Chief Financial Officer since February 2021. Immediately prior to joining Day One, Mr. York served as Chief Financial Officer and Vice President of Aeglea Biotherapeutics, Inc., a biotechnology company specializing in rare metabolic disease , where he led the investor relations, corporate development, communications, financial planning, accounting, human resources and information technology since September 2015, after joining Aeglea as Vice President, Finance, in July 2014. Prior to joining Aeglea, Mr. York held financial management roles in the life science, pharmaceutical and technology industries and began his career at PricewaterhouseCoopers LLP. Mr. York is a CPA in the state of Arizona and received a B.S. in Accounting from the University of Connecticut and an MBA from the McCombs School of Business at the University of Texas at Austin.

**Samuel Blackman, M.D., Ph.D.** is our co-founder and has served as our Chief Medical Officer since November 2018. Prior to co-founding Day One, Dr. Blackman was Head of Clinical Development at Mavupharma, a drug discovery company focused on leveraging the immune system to treat cancer and infectious diseases, from September 2018 to July 2019. Prior to Mavupharma, he was Head of Clinical Development at Silverback Therapeutics, a biotechnology company developing tissue-targeted therapeutics, from August 2016 to September 2018. Prior to Silverback, Dr. Blackman was a senior medical director at Juno Therapeutics, a biotechnology company focused on cancer treatments from June 2014 to August 2016, and before that he held roles of increasing responsibility at Seattle Genetics, Merck and GlaxoSmithKline. Dr. Blackman is a graduate of the pediatric hematology/oncology fellowship program at the Dana Farber Cancer Institute and Children's Hospital Boston, and the pediatric residency program at Cincinnati Children's Hospital Medical Center. Dr. Blackman received his B.A. in Philosophy, his M.D. and Ph.D. in Pharmacology from the University of Illinois at Chicago.

### *Non-employee directors*

**Julie Grant, M.Phil., M.B.A.** is our co-founder and our former Chief Executive Officer from November 2018 to September 1, 2020, and has served as a member of our board of directors since November 2018. Ms. Grant is currently a General Partner at Canaan and joined the partnership in July 2013. Prior to Canaan, Ms. Grant served in a variety of development and commercial roles at Genentech, a pharmaceutical company. Ms. Grant also sits on various private life sciences company boards. Ms. Grant received an M.B.A. from the Stanford Graduate School of Business, an MPhil in BioScience Enterprise from Cambridge University, and a B.S. in Molecular Biophysics and Biochemistry from Yale University. We believe Ms. Grant is qualified to serve on our board of directors because of her broad experience in finance and diverse expertise from across the entire medical spectrum.

**Dan Becker M.D., Ph.D.** has served as a member of our board of directors since December 2019. He is a Partner at Access Biotechnology, the biopharmaceutical investing arm of Access Industries, a privately held US-based industrial group, since August 2019. Prior to joining Access, Dr. Becker was a Principal at New Leaf Venture Partners, a venture capital firm, from January 2015 to May 2019, and a Principal in the Health Care practice at the Boston Consulting Group, from August 2009 to January 2015. Dr. Becker trained clinically in internal medicine and nephrology at Brigham and Women's Hospital and Massachusetts General Hospital, and was a Research Fellow at Harvard Medical School. He obtained both his M.D. and Ph.D. (Cellular and Molecular Biology) degrees from the University of Michigan, and received his B.S. in Physiology from the University of Illinois at Urbana-Champaign. We believe Dr. Becker is qualified to serve on our board of directors because of his medical training and expertise in early stage biotech companies.

**Derek DiRocco, Ph.D.** has served as a member of our board of directors since February 2021. He is currently a principal at RA Capital Management, a venture capital firm, and was previously an analyst from June 2015 to December 2017 and an associate from July 2013 to June 2015. Dr. DiRocco serves on the board of directors of

two public pharmaceutical companies, iTeos Therapeutics, Inc. and 89bio, Inc. He also sits on the boards of various private life sciences companies. Dr. DiRocco holds a B.A. in Biology from Holy Cross College and a Ph.D. in Pharmacology from the University of Washington. We believe that Dr. DiRocco is qualified to serve on our board of directors because of his experience as an investor in biotechnology companies and role in early-stage companies. Dr. DiRocco has notified us that he will resign from our board of directors effective immediately prior to Conversion and the effectiveness of the registration statement of which this prospectus forms a part.

**Michael Gladstone** has served as a member of our board of directors since December 2019. He has served as a Partner at Atlas Venture, a venture capital firm, since June 2020, and he previously served as a principal from May 2015 to June 2020. Prior to joining Atlas in 2012, Mr. Gladstone worked at L.E.K. Consulting, a management consulting firm, and previously, he conducted HIV vaccine research in the Viral Pathogenesis department of Beth Israel Deaconess Medical Center. Michael serves as an advisor to several organizations, including as member of the Corporate Advisory Committee for National Tay Sachs and Allied Diseases, a national organization focused on funding research, promoting awareness, and supporting families affected by Tay-Sachs and related genetic diseases. Mr. Gladstone holds an A.B. in Biochemical Sciences from Harvard University. We believe Mr. Gladstone is qualified to serve on our board of directors because of his extensive experience in the field of biotechnology.

**Natalie Holles** has served as a member of our board of directors since February 2021. She served as President and Chief Executive Officer at Audentes Therapeutics, Inc., a biotechnology company focused on genetic medicines, from January 2020 through March 2021, and prior to that served as their President and Chief Operating Officer beginning in May 2018 and Senior Vice President, Chief Operating Officer beginning in August 2015. Previously, Ms. Holles served as Senior Vice President, Corporate Development at Hyperion Therapeutics, Inc., a rare disease pharmaceutical company, from June 2013 through its acquisition by Horizon Pharma, plc in May 2015. From August 2012 until June 2013, Ms. Holles served as the Executive Vice President, Corporate Development at Immune Design, Inc., an immunotherapy company, and from December 2010 to June 2013, Ms. Holles served as an independent life sciences corporate development consultant. Earlier in her career, Ms. Holles served as the Vice President, Business Development at KAI Pharmaceuticals, Inc., which was acquired by Amgen in 2012, and previously held corporate development and commercial roles at InterMune, Inc. and Genentech, Inc. Ms. Holles holds a B.A. in Human Biology from Stanford University and an M.A. in Molecular, Cellular and Developmental Biology from the University of Colorado, Boulder, where she was a Howard Hughes Medical Institute Predoctoral Fellow. We believe Ms. Holles is qualified to serve on our board of directors because of her operational and business development experience.

**John Josey, Ph.D., M.B.A.**, has served as a member of our board of directors since September 2020. He previously served as President and Chief Executive Officer of Peloton Therapeutics, Inc., from August 2013 to July 2019, and prior to that was its President and Chief Scientific Officer. Previously, Dr. Josey was Vice President of Discovery Chemistry from 2004 to 2011, Senior Director of Lead Generation from 2000 to 2004 and Senior Director of High-Speed Synthesis from 1998 to 2000 at Array BioPharma Inc., a biotechnology company. Prior to joining Array, Dr. Josey was employed by Amgen Inc., a biopharmaceutical company, from 1995 to 1998 in the New Leads/Combinatoral Chemistry Group of Amgen Inc.'s small molecule drug discovery program. From 1991 until 1995, Dr. Josey was employed in the Medicinal Chemistry Department of Glaxo Research Institute. He has served as an adjunct faculty member of the Department of Biochemistry at University of Texas Southwestern Medical Center since June 2018. Dr. Josey received a B.S. in Chemistry from Colorado State University, an M.B.A. from the University of Colorado and a Ph.D. in Organic Chemistry from the University of Texas at Austin. He was also a Damon Runyon-Walter Winchell postdoctoral fellow at the California Institute of Technology. We believe Dr. Josey is qualified to serve on our board of directors because of his operational perspective and his broad experience within the biotechnology industry, particularly in the area of drug discovery and development.

**Saira Ramasastry, M.S., M.Phil.,** has served as a member of our Board of Directors since March 2021. Ms. Ramasastry is the Managing Partner of Life Sciences Advisory, LLC, since April 2009, a company that she founded to provide strategic advice, business development solutions and innovative financing strategies for the life sciences industry. Ms. Ramasastry also serves on the Industry Advisory Board of the Michael J. Fox Foundation for Parkinson's Research, and as business and sustainability lead for the European Prevention of Alzheimer's Dementia consortium. From August 1999 to March 2009, Ms. Ramasastry was an investment banker with Merrill Lynch & Co., Inc. where she helped establish the biotechnology practice and was responsible for origination of mergers and acquisitions, strategic and capital markets transactions. Prior to joining Merrill Lynch she served as a financial analyst in the mergers and acquisitions group at Wasserstein Perella & Co., an investment banking firm, from July 1997 to September 1998. Ms. Ramasastry has served on the boards of directors of Therapeutics Inc., since June 2012, Vir Biotechnology, Inc., since September 2019, Glenmark Pharmaceuticals, Ltd., since April 2019, and Akounos, Inc. since June 2020. Ms. Ramasastry previously served on the boards of directors of Cassava Sciences, Inc., from February 2013 to June 2020, Repros Therapeutics Inc. from March 2013 until it was acquired by Allergan plc in January 2018 and Innovate Biopharmaceuticals, Inc. from June 2018 until it was acquired by RDD Pharma Ltd. in April 2020. Ms. Ramasastry received her B.A. in Economics with honors and distinction and an M.S. in Management Science and Engineering from Stanford University, as well as an M.Phil. in Management Studies from the University of Cambridge where she is a guest lecturer for the Bioscience Enterprise Programme. Ms. Ramasastry is also a Health Innovator Fellow of the Aspen Institute and a member of the Aspen Global Leadership Network. We believe Ms. Ramasastry is qualified to serve on our board of directors because of her extensive experience within the biotechnology industry and her operational and business development experience.

## Family relationships

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

## Election of officers

Our executive officers are appointed by, and serve at the discretion of, our board of directors. There are no family relationships among any of our directors or executive officers.

## Board composition

Our board of directors currently consists of eight members, each of whom, other than Dr. DiRocco, will be members pursuant to the board composition provisions of our restated certificate of incorporation that will become effective upon the closing of this offering. Our board of directors will consist of seven members following the effectiveness of the resignation of Dr. DiRocco. Pursuant to our current LLC Agreement, Jeremy Bender, Daniel Becker, Michael Gladstone, Julie Grant, Natalie Holles, John Josey and Saira Ramasastry have been designated to serve as members of our board of directors. Dr. DiRocco currently serves as a member of our board of directors, but will not serve as a member of the board of directors of Day One Biopharmaceuticals, Inc. following the Conversion. Dr. DiRocco was designated by RA Capital Healthcare Fund, L.P. and RA Capital NEXUS Fund II, L.P. Ms. Grant was designated by Canaan XI L.P. Mr. Gladstone was designated by Atlas Venture Fund XI, L.P. Dr. Becker was designated by AI Day1 LLC. Dr. Bender was designated pursuant to his role as the chief executive officer of Day One LLC. Drs. Josey and Ramasastry and Ms. Holles were designated by a majority of the other managers of Day One LLC. Five of our continuing directors are independent within the meaning of the independent director guidelines of the Nasdaq Global Market, or Nasdaq.

## Classified board of directors

Upon the completion of this offering and the effectiveness of our restated certificate of incorporation and restated bylaws, our board of directors will be divided into three staggered classes of directors. At each annual meeting of stockholders, a class of directors will be subject to re-election for a three-year term. As a result, only one class of directors will be elected at each annual meeting of our stockholders, with the other classes continuing for the remainder of their respective three-year terms. Our directors will be divided among the three classes as follows:

- the Class I directors will be Michael Gladstone and Natalie Holles and their terms will expire at the first annual meeting of stockholders held following the completion of the offering;
- the Class II directors will be Julie Grant and John Josey and their terms will expire at the second annual meeting of stockholders held following the completion of the offering; and
- the Class III directors will be Jeremy Bender, Dan Becker and Saira Ramasastry and their terms will expire at the third annual meeting of stockholders held following the completion of the offering.

Each director's term continues until the election and qualification of his or her successor, or his or her earlier death, resignation or removal. Our restated certificate of incorporation and restated bylaws that will be in effect upon the completion of this offering authorize only our board of directors to fill vacancies on our board of directors. Any increase or decrease in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the directors. This classification of our board of directors may have the effect of delaying or preventing changes in control of our company. See the section titled "Description of capital stock—Anti-takeover provisions—Restated certificate of incorporation and Restated Bylaw Provisions."

## Director independence

In connection with this offering, we have applied to list our common stock approved for listing on Nasdaq. Under the rules of Nasdaq, independent directors must comprise a majority of a listed company's board of directors within a specified period following the completion of this offering. In addition, the rules of Nasdaq require that, subject to specified exceptions, each member of a listed company's audit, compensation and nominating and governance committees be independent. Under the rules of Nasdaq, a director will only qualify as an "independent director" if, in the opinion of that company's board of directors, that person does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

Audit committee members must also satisfy the independence criteria set forth in Rule 10A-3 under the Securities Exchange Act of 1934, as amended, or the Exchange Act. In order to be considered independent for purposes of Rule 10A-3, a member of an audit committee of a listed company may not, other than in his or her capacity as a member of the audit committee, the board of directors or any other board committee: (i) accept, directly or indirectly, any consulting, advisory or other compensatory fee from the listed company or any of its subsidiaries; or (ii) be an affiliated person of the listed company or any of its subsidiaries. We intend to satisfy the audit committee independence requirements of Rule 10A-3 as of the completion of this offering. Additionally, compensation committee members must not have a relationship with us that is material to the director's ability to be independent from management in connection with the duties of a compensation committee member.

Our board of directors has undertaken a review of the independence of each director and considered whether each director has a material relationship with us that could compromise his or her ability to exercise

independent judgment in carrying out his or her responsibilities. As a result of this review, our board of directors determined that all of our directors, except for Jeremy Bender and Julie Grant, are “independent directors” as defined under the applicable rules and regulations of the Securities and Exchange Commission, or SEC, and the listing requirements and rules of Nasdaq. In making these determinations, our board of directors reviewed and discussed information provided by the directors and us with regard to each director’s business and personal activities and relationships as they may relate to us and our management, including the beneficial ownership of our capital stock by each non-employee director and the transactions involving them described in the section titled “Certain relationships and related party transactions.”

## Lead Independent Director

Julie Grant serves as or Chair of our board of directors. As described above, our board has determined that Ms. Grant is not “independent” as defined under the applicable rules and regulations of the Securities and Exchange Commission, or SEC, and the listing requirements and rules of Nasdaq.

Our corporate governance guidelines provide that one of our independent directors may serve as the lead independent director at any time that Ms. Grant or anyone else who is not an independent director is serving as the chair of the board of directors. Our board of directors appointed Natalie Holles, effective upon the completion of this offering, to serve as our lead independent director. As lead independent director, Ms. Holles will preside over periodic meetings of our independent directors and coordinate certain activities of the independent directors.

## Committees of the board of directors

Our board of directors will establish prior to the completion of this offering an audit committee, a compensation committee and a nominating and governance committee, each of which will have the composition and responsibilities described below as of the completion of this offering. Each of the below committees will have a written charter approved by our board of directors. Upon completion of this offering, copies of each charter will be posted on the investor relations section of our website. Members serve on these committees will serve until their resignation or until otherwise determined by our board of directors.

### *Audit committee*

Upon the completion of this offering and the effectiveness of our restated certificate of incorporation, our audit committee will be comprised of Dan Becker, Michael Gladstone and Saira Ramasastry, with Ms. Ramasastry as the chairperson of our audit committee. Our board of directors has determined that the composition of our audit committee meets the requirements for independence under the current Nasdaq and SEC rules and regulations. Each member of our audit committee is financially literate. In addition, our board of directors has determined that Ms. Ramasastry is an “audit committee financial expert” as defined in Item 407(d)(5)(ii) of Regulation S-K promulgated under the Securities Act of 1933, as amended. This designation does not impose on her any duties, obligations or liabilities that are greater than are generally imposed on members of our audit committee and our board of directors. Our audit committee is directly responsible for, among other things:

- selecting and hiring our independent registered public accounting firm;
- the qualifications, independence and performance of our independent auditors;
- the preparation of the audit committee report to be included in our annual proxy statement;
- our compliance with legal and regulatory requirements;

- our accounting and financial reporting processes, including our financial statement audits and the integrity of our consolidated financial statements; and
- reviewing and approving related-person transactions.

### *Compensation committee*

Upon the completion of this offering and the effectiveness of our restated certificate of incorporation, our compensation committee will be comprised of Dan Becker, John Josey and Natalie Holles, with Ms. Holles as the chairman of our compensation committee. Our board of directors has determined that each member of our compensation committee is a non-employee director, as defined by Rule 16b-3 promulgated under the Exchange Act and meets the requirements for independence under the current Nasdaq listing standards and SEC rules and regulations. Our compensation committee is responsible for, among other things:

- evaluating, recommending, approving and reviewing executive officer compensation arrangements, plans, policies and programs;
- evaluating and recommending non-employee director compensation arrangements for determination by our board of directors;
- administering our cash-based and equity-based compensation plans; and
- overseeing our compliance with regulatory requirements associated with the compensation of directors, officers and employees.

### *Nominating and governance committee*

Upon the completion of this offering and the effectiveness of our restated certificate of incorporation, our nominating and governance committee will be comprised of Michael Gladstone, John Josey and Natalie Holles, with Dr. Josey as the chair of our nominating and governance committee. Our board of directors has determined that each member of our nominating and governance committee meets the requirements for independence under the current Nasdaq listing standards. Our nominating and governance committee is responsible for, among other things:

- identifying, considering and recommending candidates for membership on our board of directors;
- overseeing the process of evaluating the performance of our board of directors; and
- advising our board of directors on other corporate governance matters.

## Compensation committee interlocks and insider participation

None of the members of our compensation committee has at any time been one of our officers or employees. None of our executive officers has served as a member of the board of directors, or as a member of the compensation or similar committee, of any entity that has one or more executive officers who served on our board of directors or compensation committee during the year ended December 31, 2020. Prior to establishing the compensation committee, our full board of directors made decisions relating to the compensation of our officers.

## Code of business conduct and ethics

Prior to the completion of this offering, our board of directors will adopt a code of business conduct and ethics that applies to all of our employees, officers and directors, including our Chief Executive Officer and other

executive and senior officers. The full text of our code of business conduct and ethics will be posted on the investor relations section of our website. The reference to our website address in this prospectus does not include or incorporate by reference the information on our website into this prospectus. We intend to disclose future amendments to certain provisions of our code of business conduct and ethics, or waivers of these provisions, on our website or in public filings to the extent required by the applicable rules.

## Non-employee director compensation

Ms. Grant and Dr. Bender did not receive any compensation for their services as directors during the year ended December 31, 2020, while also serving as our former Chief Executive Officer and our current Chief Executive Officer, respectively. Please see the section titled "*Summary compensation table*" for a summary of payments made to each of Ms. Grant and Dr. Bender during their respective roles as our Chief Executive Officer. Other than as described below, none of our non-employee directors received any fees or reimbursement of any expenses (other than customary expenses in connection with the attendance of meetings of our board of directors) or any equity or non-equity awards in the year ended December 31, 2020.

## 2020 non-employee director compensation table

The following table presents the total compensation earned by each of our non-employee directors in the year ended December 31, 2020.

| Name | Fees earned or paid in cash (1) | Incentive share awards (2) | All other compensation | Total |
|---|---|---|---|---|
| Daniel Becker, M.D., Ph.D. | — | — | — | — |
| Derek DiRocco, Ph.D.(3) | — | — | — | — |
| Michael Gladstone | — | — | — | — |
| Natalie Holles(3) | — | — | — | — |
| Saira Ramasastry, M.S., M.Phil.(3) | — | — | — | — |
| John A. Josey, Ph.D. | $ 7,277 | $ 111,095 | — | $118,372 |

(1) The amounts reported in this column represent fees earned for service on our board of directors.

(2) The amounts reported in the "Incentive Shares" column reflect the aggregate fair value of incentive shares awarded during the year computed in accordance with the provisions of FASB ASC Topic 718. See Note 12 to our consolidated financial statements included elsewhere in this prospectus regarding assumptions underlying the valuation of equity awards.

(3) Derek DiRocco, Natalie Holles and Saira Ramasastry were not on our board during the year ended December 31, 2020.

(4) As of December 31, 2020, John A. Josey, Ph.D. held an aggregate of 28,559 incentive shares, 1/48$^{th}$ of which vest monthly commencing on the vesting commencement date of September 16, 2020. None of our other non-employee directors held incentive shares as of December 31, 2020.

## Non-employee director compensation policy

In connection with this offering, we intend to adopt a non-employee director compensation policy that will become effective as of the completion of this offering that will be designed to enable us to attract and retain, on a long-term basis, highly qualified non-employee directors.

In February 2021, our board of directors approved a grant of 40,900 incentive shares to Ms. Holles pursuant to our Incentive Share Plan and subject to the terms and conditions set forth in her award agreements under the Incentive Share Plan. In March 2021, our board of directors approved a grant of 40,900 incentive shares to Ms. Ramasastry pursuant to our Incentive Share Plan and subject to the terms and conditions set forth in her award agreements under the Incentive Share Plan

# Executive compensation

The following tables and accompanying narrative disclosure set forth information about the compensation earned by our named executive officers during the year ended December 31, 2020. Julie Grant served as our principal executive officer for part of the year, and as of December 31, 2020, our only employees serving as executive officers as of December 31, 2020, were:

- Jeremy Bender, Chief Executive Officer and President; and
- Samuel Blackman, Chief Medical Officer and Co-Founder.

## Summary compensation table

The following table presents summary information regarding the total compensation for services rendered in all capacities that was awarded to and earned by our named executive officers during the year ended December 31, 2020.

| Name and Principal Position | Year | Salary ($) | Equity awards[1] ($) | Non-Equity incentive plan compensation[2] ($) | Total ($) |
|---|---|---|---|---|---|
| Jeremy Bender[3] | | | | | |
| Chief Executive Officer and President | 2020 | 141,667 | 2,555,158 | 56,356 | 2,753,181 |
| Samuel Blackman | | | | | |
| Chief Medical Officer and Co-Founder | 2020 | 367,000 | — | 110,100 | 477,100 |
| Julie Grant | | | | | |
| Former Chief Executive Officer and Co-Founder | 2020 | 47,197(4) | — | — | 47,197 |

(1) The amounts reported in the Equity Awards column represents the aggregate grant date fair value of incentive shares granted under our Incentive Share Plan to the named executive officers during the year ended December 31, 2020 as computed in accordance with FASB ASC Topic 718, or ASC 718. The assumptions used in calculating the grant date fair value of the awards reported in the Equity Awards columns are set forth in Note 12 to our audited consolidated financial statements included elsewhere in this prospectus. Note that the amounts reported in this column reflect the aggregate accounting cost for these awards, and do not necessarily correspond to the actual economic value that may be received by the named executive officer from the awards.

(2) For additional information regarding the non-equity incentive plan compensation, see the subsection titled "—Non-Equity Incentive Plan Awards."

(3) Dr. Bender is also a member of our board of directors but does not receive any additional compensation in his capacity as a director.

(4) This amount reflects the compensation that Ms. Grant received for her service as our Chief Executive Officer prior to her resignation in September 2020.

## Outstanding equity awards at 2020 fiscal year-end table

The following table provides information regarding outstanding equity awards stock held by our named executive officers as of December 31, 2020. The figures set forth below do not give effect to the Conversion. All of these incentive shares will be converted into shares of common stock upon the Conversion; see the subsection titled "—Effects of conversion" below for information on the conversion of these incentive shares to shares of common stock.

| | | Incentive share awards | |
|---|---|---|---|
| Name | Grant date[1] | Number of incentive shares that have not vested (#) | Market value of incentive shares that have not vested[2] ($) |
| Jeremy Bender | 10/6/2020 | 656,853 | |

(1) All outstanding equity awards were granted under our Incentive Share Plan.

(2) The market value of the unvested incentive share awards is based on the assumed initial public offering price of $ per share, which is the midpoint of the price range per share set forth on the cover page of this prospectus.

## Effects of conversion

Upon the Conversion, all outstanding incentive shares of Day One LLC will convert into shares of common stock. In accordance with the plan of conversion, each outstanding incentive share will convert into a number of shares of common stock based upon a conversion price to be determined by our board immediately prior to the Conversion. To the extent an incentive share award is subject to vesting, the common stock issued upon conversion will continue to be subject to the same vesting schedule. The table below shows the number of unrestricted and restricted shares of common stock that will be issued upon Conversion for the incentive shares held by each named executive officer.

| Name | Total incentive shares held as of December 31, 2020 | Number of shares of common stock to be issued upon conversion[1] | Number of shares of restricted common stock to be issued upon conversion[1] |
|---|---|---|---|
| Jeremy Bender | 656,853 | | |

(1) Common stock issued upon conversion of incentive shares is based on an assumed fair value of $ per common share, which is the midpoint of the price range per share set forth on the cover page of this prospectus. See the section titled “Conversion” for additional information on the Conversion.

## Non-equity incentive plan awards

Annual bonuses for our executive officers are based on the achievement of corporate performance objectives, as determined by our board of directors. For the 2020 bonuses, the corporate performance objectives included advancing DAY101 as the standard of care for pLGG and expanding our pipeline. The target annual bonuses for Dr. Bender and Dr. Blackman were equal to 40% and 30%, respectively, of their respective annual base salaries. In January 2021, based on the achievement of corporate performance objectives, our board of directors determined to award bonuses for 2020 equal to 100% of each of Dr. Bender and Dr. Blackman’s target bonuses, as set forth in the table above. Dr. Bender’s bonus was pro-rated to reflect his partial year of service as our Chief Executive Officer.

## Change in control and severance arrangements with our named executive officers

Each of our current named executive officers is employed at-will and their compensation is reviewed periodically and subject to the discretion of our board of directors.

We intend to enter into new agreements with each of our executive officers to provide for severance benefits upon termination of employment or a termination of employment in connection with a change in control of our business.

## Equity plans

We believe that our ability to grant equity-based awards is a valuable compensation tool that enables us to attract, retain, and motivate our employees, consultants, and directors by aligning their financial interests with those of our stockholders. The principal features of our equity plans are summarized below. These summaries are qualified in their entirety by reference to the actual text of the plans, which are filed as exhibits to the registration statement of which this prospectus is a part.

Prior to the Conversion, we have granted incentive shares to eligible service recipients in accordance with the terms of the limited liability company agreement of Day One LLC and the Incentive Share Plan. Following the Conversion and the effectiveness of the 2021 Equity Incentive Plan, or the 2021 Plan, we expect to grant awards to eligible participants from time to time under the 2021 Plan.

## Incentive share plan

Our Incentive Share Plan was adopted by our board of directors in November 2018 and by our members thereafter in November 2018. The Incentive Share Plan provides for the grant of incentive shares pursuant to the terms of our LLC Agreement. Incentive shares may be granted to our employees, directors, advisors, and consultants. Incentive shares are governed by the LLC agreement and the Incentive Share Plan, and are intended to qualify as "profits interests" within the meaning of I.R.S. Revenue Procedure 93-27 as clarified by I.R.S. Revenue Procedures 2001-43 (provided, however, that any profits interests with a Participation Threshold (as defined below) of zero may be considered capital interests under applicable tax law). Our board of directors determines the number of incentive shares covered by grants, the vesting schedules of incentive share grants and the participation thresholds of incentive shares. The incentive shares represent profits interests in the increase in our value over a participation threshold, or Participation Threshold, as determined at the time of grant. The Participation Threshold is established for tax compliance purposes related to IRS Revenue Procedures 93-27 and 2001-43 where we allocate equity value to our share classes in a hypothetical liquidation transaction as of the date of grant. Our board of directors, in its sole discretion, may provide in any award agreement for the accelerated vesting of outstanding profits interests or capital interests as the case may be.

As of March 31, 2021, incentive shares were issued and outstanding and an additional incentive shares were authorized for future issuance under the LLC agreement. Upon the Conversion, the outstanding incentive shares will convert into shares of our common stock with a value equal to the upside of the incentive shares above their applicable Participation Thresholds, which conversion will be based on a conversion price to be determined by our board of directors immediately prior to the Conversion. To the extent an incentive share is subject to vesting, the common stock issued upon conversion will continue to be subject to the same vesting schedule. Upon the consummation of this offering, there will be shares of common stock outstanding in respect of incentive shares that have converted into common stock based on an assumed fair value of $ per common share, which is the midpoint of the price range per share set forth on the cover page of this prospectus.

### *2021 Equity Incentive Plan*

We intend to adopt our 2021 Equity Incentive Plan, or the 2021 Plan, that will become effective upon the effectiveness of the registration statement of which this prospectus forms a part and will serve as the successor to our Incentive Share Plan. Our 2021 Plan authorizes the award of stock options, restricted stock, or RSAs, stock appreciation rights, or SARs, restricted stock units, or RSUs, cash awards, performance awards and stock bonus awards. We have initially reserved shares of our common stock, plus the number of shares of common stock issued in respect of incentive shares of Day One LLC that are subject to vesting immediately following the effectiveness of the registration statement of which this prospectus forms a part that expire, terminate or are otherwise surrendered, canceled, forfeited or repurchased by us pursuant to a contractual repurchase right, on the effective date of the 2021 Plan, for issuance pursuant to awards granted under our 2021 Plan. The number of shares reserved for issuance under our 2021 Plan will increase automatically on January 1 of each of 2022 through 2031 by the number of shares equal to the lesser of (i) % of the aggregate number of outstanding shares of all classes of our common stock, and common stock issuable upon the conversion of preferred stock or the exercise of pre-funded warrants, if any, as of the immediately preceding December 31, or (ii) a number of shares of all classes of our common stock or common stock equivalents as may be determined by our board of directors.

In addition, the following shares will again be available for issuance pursuant to awards granted under our 2021 Plan:

- shares subject to options or SARs granted under our 2021 Plan that cease to be subject to the option or SAR for any reason other than exercise of the option or SAR;

- shares subject to awards granted under our 2021 Plan that are subsequently forfeited or repurchased by us at the original issue price;
- shares subject to awards granted under our 2021 Plan that otherwise terminate without such shares being issued;
- shares subject to awards granted under our 2021 Plan that are surrendered, cancelled or exchanged for cash or a different award (or combination thereof); and
- shares subject to awards under our 2021 Plan that are used to pay the exercise price of an option or withheld to satisfy the tax withholding obligations related to any award.

*Administration*. Our 2021 Plan is expected to be administered by our compensation committee, or by our board of directors acting in place of our compensation committee. Subject to the terms and conditions of the 2021 Plan, the administrator will have the authority, among other things, to select the persons to whom awards may be granted, construe and interpret our 2021 Plan as well as to determine the terms of such awards and prescribe, amend and rescind the rules and regulations relating to the plan or any award granted thereunder. The 2021 Plan provides that the administrator may delegate its authority, including the authority to grant awards, to one or more executive officers to the extent permitted by applicable law, provided that awards granted to non-employee directors may only be determined by our board of directors.

*Eligibility*. Our 2021 Plan provides for the grant of awards to our employees, directors, consultants, independent contractors and advisors. No non-employee director may receive awards under our 2021 Plan that, when combined with cash compensation received as a non-employee director, exceed $ in a calendar year or $ in the calendar year of his or her initial services as a non-employee director with us.

*Options*. The 2021 Plan provides for the grant of both incentive stock options intended to qualify under Section 422 of the Code, and non-statutory stock options to purchase shares of our common stock at a stated exercise price. Incentive stock options may only be granted to employees, including officers and directors who are also employees. The exercise price of stock options granted under the 2021 Plan must be at least equal to the fair market value of our common stock on the date of grant. Incentive stock options granted to an individual who holds, directly or by attribution, more than 10% of the total combined voting power of all classes of our capital stock must have an exercise price of at least 110% of the fair market value of our common stock on the date of grant. Subject to stock splits, dividends, recapitalizations or similar events, no more than shares may be issued pursuant to the exercise of incentive stock options granted under the 2021 Plan.

Options may vest based on service or achievement of performance conditions. The administrator may provide for options to be exercised only as they vest or to be immediately exercisable, with any shares issued on exercise being subject to our right of repurchase that lapses as the shares vest. The maximum term of options granted under our 2021 Plan is ten years from the date of grant, except that the maximum permitted term of incentive stock options granted to an individual who holds, directly or by attribution, more than 10% of the total combined voting power of all classes of our capital stock is five years from the date of grant.

*Restricted stock awards*. An RSA is an offer by us to sell shares of our common stock subject to restrictions, which may lapse based on the satisfaction of service or achievement of performance conditions. The price, if any, of an RSA will be determined by the compensation committee. Holders of RSAs, unlike holders of options, will have the right to vote and any dividends or stock distributions paid pursuant to RSAs will be accrued and paid when the restrictions on such shares lapse. Unless otherwise determined by the compensation committee at the time of award, vesting will cease on the date the participant no longer provides services to us and unvested shares may be forfeited to or repurchased by us.

*Stock appreciation rights*. A SAR provides for a payment, in cash or shares of our common stock (up to a specified maximum of shares, if determined by our compensation committee), to the holder based upon the difference between the fair market value of our common stock on the date of exercise and a predetermined exercise price, multiplied by the number of shares. The exercise price of a SAR must be at least the fair market value of a share of our common stock on the date of grant. SARs may vest based on service or achievement of performance conditions, and may not have a term that is longer than ten years from the date of grant.

*Restricted stock units*. RSUs represent the right to receive shares of our common stock at a specified date in the future, and may be subject to vesting based on service or achievement of performance conditions. Payment of earned RSUs will be made as soon as practicable on a date determined at the time of grant, and may be settled in cash, shares of our common stock or a combination of both. No RSU may have a term that is longer than ten years from the date of grant.

*Performance awards*. Performance awards granted to pursuant to the 2021 Plan may be in the form of a cash bonus, or an award of performance shares or performance units denominated in shares of our common stock that may be settled in cash, property or by issuance of those shares subject to the satisfaction or achievement of specified performance conditions.

*Stock bonus awards*. A stock bonus award provides for payment in the form of cash, shares of our common stock or a combination thereof, based on the fair market value of shares subject such award as determined by our compensation committee. The awards may be granted as consideration for services already rendered, or at the discretion of the compensation committee, may be subject to vesting restrictions based on continued service or performance conditions.

*Cash awards*. A cash award is an award that is denominated in, or payable to an eligible participant solely in, cash.

*Dividend equivalents rights*. Dividend equivalent rights may be granted at the discretion of the administrator, and represent the right to receive the value of dividends, if any, paid by us in respect of the number of shares of our common stock underlying an award. Dividend equivalent rights will be subject to the same vesting or performance conditions as the underlying award and will be paid only at such time as the underlying award has become fully vested. Dividend equivalent rights may be settled in cash, shares or other property, or a combination of thereof as determined by the administrator.

*Change of control*. Our 2021 Plan provides that, in the event of a “corporate transaction” (as defined in the 2021 Plan), awards granted under the 2021 Plan may (i) be continued by the company, if we are the successor entity; (ii) assumed or substituted by the successor corporation, or a parent or subsidiary of the successor corporation, for substantially equivalent awards (including, but not limited to, an award to acquire the same consideration paid to our stockholders pursuant to the corporate transaction), (iii) accelerated in full or in part as to the exercisability or vesting; or (iv) cancelled for no consideration. If applicable, the number and kind of shares and exercise prices of awards being continued, assumed, or substituted shall be adjusted pursuant to the terms of the 2021 Plan.

The successor corporation may also issue, as replacement of our outstanding shares held by the participant, substantially similar shares, or other property subject to repurchase restrictions no less favorable to the participant. In the event the successor corporation refuses to assume, substitute, or replace any award, then such award will become fully vested and, as applicable, exercisable and any rights of repurchase or forfeiture restrictions thereon will lapse, immediately prior to the consummation of the corporation transaction. Awards with performance-based vesting criteria that are not assumed will be deemed earned and vested based on the greater of actual performance (if determinable) or 100% of target level, unless otherwise indicated pursuant to the terms and conditions of the applicable award agreement.

*Adjustment*. In the event of a change in the number of outstanding shares of our common stock without consideration by reason of a stock dividend, extraordinary dividend or distribution, recapitalization, stock split, reverse stock split, subdivision, combination, consolidation reclassification, spin-off or similar change in our capital structure, appropriate proportional adjustments may be made to the number of shares reserved for issuance under our 2021 Plan; the exercise prices, number and class of shares subject to outstanding options or SARs; the number and class of shares subject to other outstanding awards; and any applicable maximum award limits with respect to incentive stock options.

*Exchange, repricing and buyout of awards*. The administrator may, with the consent of the respective participants, issue new awards in exchange for the surrender and cancelation of any or all outstanding awards.

The administrator may also, without stockholder approval, reprice or reduce the exercise price of options or SARs or buy an award previously granted with payment in cash, shares or other consideration, in each case, subject to the terms of the 2021 Plan.

*Clawback; transferability.* All awards will be subject to clawback or recoupment pursuant to any compensation clawback or recoupment policy adopted by our board of directors or required by law during the term of service of the award holder, to the extent set forth in such policy or applicable agreement. Except in limited circumstances, awards granted under our 2021 Plan may generally not be transferred in any manner prior to vesting other than by will or by the laws of descent and distribution.

*Amendment and termination*. Our board of directors may amend our 2021 Plan at any time, subject to stockholder approval as may be required. Our 2021 Plan will terminate ten years from the date our board of directors adopts the plan, unless it is terminated earlier by our board of directors. No termination or amendment of the 2021 Plan may adversely affect any then-outstanding award without the consent of the affected participant, except as is necessary to comply with applicable laws.

## *2021 Employee Stock Purchase Plan*

We intend to adopt our 2021 Employee Stock Purchase Plan, or ESPP, that will become effective upon the effectiveness of the registration statement of which this prospectus forms a part in order to enable eligible employees to purchase shares of our common stock with accumulated payroll deductions at a discount beginning on a date to be determined by our board of directors or our compensation committee. Our ESPP is intended to qualify under Section 423 of the Code.

*Shares available*. We have initially reserved shares of our common stock for sale under our ESPP. The aggregate number of shares reserved for sale under our ESPP will increase automatically on January 1st of each of the first ten calendar years after the first offering date by the number of shares equal to the lesser of % of the total outstanding shares of all classes of our common stock, and common stock issuable upon the conversion of preferred stock or the exercise of pre-funded warrants, if any, as of the immediately preceding December 31 (rounded to the nearest whole share) or a number of shares as may be determined by our board of directors in any particular year. The aggregate number of shares issued over the term of our ESPP, subject to stock-splits, recapitalizations or similar events, may not exceed shares of our common stock.

*Administration*. Our ESPP is expected to be administered by our compensation committee, or by our board of directors acting in place of our compensation committee. Among other things, the administrator will have the authority to determine eligibility for participation in the ESPP, designate separate offerings under the plan, and construe, interpret and apply the terms of the plan.

*Eligibility*. Employees eligible to participate in any offering pursuant to the ESPP generally include any employee that is employed by us or certain of our designated subsidiaries at the beginning of the offering

period. However, our compensation committee may determine that employees who are customarily employed for 20 hours or less per week or for five months or less in a calendar year may not be eligible to participate in the ESPP. In addition, any employee who owns (or is deemed to own as a result of attribution) 5% or more of the total combined voting power or value of all classes of our capital stock, or the capital stock of one of our qualifying subsidiaries, or who will own such amount as a result of participation in the ESPP, will not be eligible to participate in the ESPP. The compensation committee may impose additional restrictions on eligibility from time to time.

*Offerings*. Under our ESPP, eligible employees will be offered the option to purchase shares of our common stock at a discount over a series of offering periods. Each offering period may itself consist of one or more purchase periods. No offering period may be longer than 27 months.

*Participation*. Participating employees will be able to purchase the offered shares of our common stock by accumulating funds through payroll deductions. Participants may select a rate of payroll deduction between % and % of their compensation. However, a participant may not purchase more than shares during any one purchase period, and may not subscribe for more than $ in fair market value of shares of our common stock (determined as of the date the offering period commences) in any calendar year in which the offering is in effect. The administrator, in its discretion, may set a lower maximum amount of shares which may be purchased.

The purchase price for shares of our common stock purchased under the ESPP will be % of the lesser of the fair market value of our common stock on (i) the first trading day of the applicable offering period or (ii) the last trading day of each purchase period in the applicable offering period.

Once an employee becomes a participant in an offering period, the participant will be automatically enrolled in each subsequent offering period at the same contribution level. A participant may reduce his or her contribution in accordance with procedures set forth by the compensation committee and may withdraw from participation in the ESPP at any time prior the end of an offering period, or such other time as may be specified by the compensation committee. Upon withdrawal, the accumulated payroll deductions will be returned to the participant without interest.

*Adjustments upon recapitalization*. If the number of outstanding shares of our common stock is changed by stock dividend, recapitalization, stock split, reverse stock split, subdivision, combination, reclassification or similar change in our capital structure without consideration, then our compensation committee will proportionately adjust the number and class of common stock that is available under the ESPP, the purchase price and number of shares any participant has elected to purchase as well as the maximum number of shares which may be purchased by participants.

*Change of control*. If we experience a change of control transaction, any offering period that commenced prior to the closing of the proposed change of control transaction will be shortened and terminated on a new purchase date. The new purchase date will occur on or prior to the closing of the proposed change of control transaction, and our ESPP will then terminate on the closing of the proposed change of control.

*Transferability*. A participant may not assign, transfer, pledge or otherwise dispose of payroll deductions credited to his or her account, or any rights with regard to an election to purchase shares pursuant to the ESPP other than by will or the laws of descent or distribution.

*Amendment; termination*. The administrator may amend, suspend or terminate the ESPP at any time without stockholder consent, except as required by law. Our ESPP will continue until the earlier to occur of (i) termination of the ESPP by our board of directors, (ii) issuance of all of the shares reserved for issuance under the ESPP, or (iii) the tenth anniversary of the effective date under the ESPP.

### *401(k) plan and other benefits*

Our employees, including Dr. Bender and Dr. Blackman, who satisfy certain eligibility requirements, are eligible to participate in a 401(k) plan maintained by TriNet, a professional employer organization that is the legal employer of our employees. Our named executive officers are eligible to participate in the 401(k) plan on the same terms as other full-time employees. We believe that providing a vehicle for tax-deferred retirement savings though our 401(k) plan adds to the overall desirability of our executive compensation package and further incentivizes our employees, including our named executive officers, in accordance with our compensation policies.

All of our full-time employees, including our named executive officers, are eligible to participate in our health and welfare plans, which are provided through TriNet. These health and welfare plans include medical, workers' compensation, and short-term and long-term disability insurance.

## Limitations on liability and indemnification matters

Our restated certificate of incorporation that will become effective in connection with the completion of this offering contains provisions that limit the liability of our directors for monetary damages to the fullest extent permitted by the DGCL. Consequently, our directors will not be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duties as directors, except liability for:

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

Our restated certificate of incorporation and our restated bylaws that will become effective in connection with the completion of this offering require us to indemnify our directors and officers to the maximum extent not prohibited by the DGCL and allow us to indemnify other employees and agents as set forth in the DGCL.

We have entered, and intend to continue to enter, into separate indemnification agreements with our directors, officers and certain of our key employees, in addition to the indemnification provided for in our restated certificate of incorporation and restated bylaws. These agreements, among other things, require us to indemnify our directors, officers and key employees for certain expenses, including attorneys' fees, judgments, penalties, fines and settlement amounts actually incurred by these individuals in any action or proceeding arising out of their service to us or any of our subsidiaries or any other company or enterprise to which these individuals provide services at our request. Subject to certain limitations, our indemnification agreements also require us to advance expenses incurred by our directors, officers and key employees for the defense of any action for which indemnification is required or permitted.

We believe that these indemnification provisions and agreements are necessary to attract and retain qualified directors, officers and key employees. We intend to have a directors' and officers' liability insurance.

The limitation of liability and indemnification provisions in our restated certificate of incorporation and restated bylaws may discourage stockholders from bringing a lawsuit against our directors and officers for breach of their fiduciary duty. They may also reduce the likelihood of derivative litigation against our directors and officers, even though an action, if successful, might benefit us and other stockholders. Further, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and officers as required by these indemnification provisions.

At present, there is no pending litigation or proceeding involving any of our directors or executive officers as to which indemnification is required or permitted, and we are not aware of any threatened litigation or proceeding that may result in a claim for indemnification.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, executive officers or persons controlling us, we have been informed that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

# Certain relationships and related party transactions

In addition to the compensation arrangements, including employment, termination of employment and change in control arrangements, with our directors and executive officers, including those discussed in the sections titled “Management” and “Executive compensation,” the following is a description of each transaction since our formation in November 2018 and each currently proposed transaction in which:

- we have been or are to be a participant;
- the amounts involved exceeded or will exceed the lesser of $120,000 and 1% of our total assets; and
- any of our directors, executive officers or holders of more than 5% of our capital stock, or an affiliate or immediate family member of the foregoing persons, had or will have a direct or indirect material interest.

Other than as described below, there have not been, nor are there any currently proposed, transactions or series of similar transactions to which we have been or will be a party other than compensation arrangements, which are described where required under the section entitled “Executive compensation.”

## Convertible promissory notes

In December 2018, we issued and sold in a private placement to Canaan XI L.P., which is affiliated with Julie Grant, our director, a convertible promissory note with a principal amount of $1.0 million, or the 2018 Note. The 2018 Note accrued interest at a rate of 6% per annum. The 2018 Note, including an aggregate of approximately $62,000 in accrued interest thereon, were automatically converted into shares of our Series A redeemable convertible preferred shares in the Series A redeemable convertible preferred share financing described below.

In July 2019, we issued and sold in a private placement to Canaan XI L.P. a convertible promissory note with a principal amount of $1.0 million, or the 2019 Note. The 2019 Note accrued interest at a rate of 6% per annum. The 2019 Note, including an aggregate of approximately $20,000 in accrued interest thereon, were automatically converted into shares of our Series A redeemable convertible preferred shares in the Series A redeemable convertible preferred share financing described below.

## Series A redeemable convertible preferred shares financing

In three closings in December 2019, November 2020 and December 2020, we sold an aggregate of 9,828,498 Series A redeemable convertible preferred shares at a purchase price of $6.7401 per share for an aggregate purchase price of approximately $60.0 million. Each of our Series A redeemable convertible preferred shares is expected to be converted into shares of our common stock upon the completion of this offering.

The purchasers of our Series A redeemable convertible preferred shares are entitled to specified registration rights. For additional information, see the section titled “Description of capital stock—Registration rights.” The following table summarizes the Series A redeemable convertible preferred shares purchased by members of our board of directors or their affiliates and holders of more than 5% of our outstanding capital stock. The terms of these purchases were the same for all purchasers of our Series A redeemable convertible preferred shares. Please refer to the section titled “Principal stockholders” for more details regarding the shares held by these entities.

| Name of stockholder | Number of Series A redeemable convertible preferred shares | Total purchase price ($) |
|---|---|---|
| Canaan XI L.P.[1] | 3,152,042[2] | 14,999,991 |
| Atlas Venture Fund XI, L.P.[3] | 3,338,228 | 22,499,991 |
| AI Day1 LLC[4] | 3,338,228 | 22,499,991 |

(1) Julie Grant is a member of our board of directors and is a non-managing member of Canaan Partners XI LLC, the general partner of Canaan XI LP.

(2) Represents (a) 926,557 shares of our Series A redeemable convertible preferred shares that were converted from the 2018 Note and 2019 Note described above and (b) 2,225,485 shares of our Series A redeemable convertible preferred shares purchased at the purchase price of $6.7401 per share.

(3) Michael Gladstone is a member of our board of directors and is a member of Atlas Venture Associates XI, LLC, which is the general partner of Atlas Venture Associates XI, LP, the general partner of both Atlas Venture Fund XI, L.P and Atlas Venture Opportunity Fund I, L.P.

(4) Dan Becker is a member of our board of directors and is a principal at Access Industries, Inc, an affiliate of Access Industries Management LLC, which controls AI Day1 LLC.

## Series B redeemable convertible preferred shares financing

In February 2021, we sold an aggregate of 4,145,441 Series B redeemable convertible preferred shares at a purchase price of $31.3597 per share for an aggregate purchase price of approximately $130.0 million. Each of our Series B redeemable convertible preferred shares is expected to be converted into shares of our common stock upon the completion of this offering.

The purchasers of our Series B redeemable convertible preferred shares are entitled to specified registration rights. For additional information, see the section titled “Description of capital stock—Registration rights.” The following table summarizes the Series B redeemable convertible preferred shares purchased by members of our board of directors or their affiliates and holders of more than 5% of our outstanding capital stock. The terms of these purchases were the same for all purchasers of our Series B redeemable convertible preferred shares. Please refer to the section titled “Principal stockholders” for more details regarding the shares held by these entities.

| Name of stockholder | Number of Series B redeemable convertible preferred shares | Total purchase price ($) |
|---|---|---|
| Canaan Partners[1] | 63,776 | 1,999,996 |
| Atlas Venture Fund XI, L.P.[2] | 318,880 | 9,999,981 |
| AI Day1 LLC[3] | 318,880 | 9,999,981 |
| Affiliates of RA Capital[4] | 1,275,522 | 39,999,987 |

(1) Julie Grant is a member of our board of directors and is a non-managing member of Canaan Partners XI LLC, the general partner of Canaan XI LP.

(2) Michael Gladstone is a member of our board of directors and is a member of Atlas Venture Associates XI, LLC, which is the general partner of Atlas Venture Associates XI, LP, the general partner of both Atlas Venture Fund XI, L.P and Atlas Venture Opportunity Fund I, L.P.

(3) Dan Becker is a member of our board of directors and is a principal at Access Industries, Inc., an affiliate of Access Industries Management LLC, which controls AI Day1 LLC.

(4) Consists of 1,084,194 shares of Series B preferred shares purchased by RA Capital Healthcare Fund, L.P. and 191,328 shares of Series B preferred shares purchased by RA Capital Nexus Fund II, L.P. Derek DiRocco is a member of our board of directors and is a principal at RA Capital Management, L.P., the managing partner of RA Capital Healthcare Fund, L.P. and RA Capital Nexus Fund II, L.P.

## Millennium Pharmaceuticals, Inc. share exchange

On May 4, 2021, we entered into a Stock Exchange Agreement with Millennium Pharmaceuticals, Inc. an affiliate of Takeda Pharmaceutical Company Limited, or Takeda. Pursuant to the terms of the Millennium Stock

Exchange Agreement and the Plan of Conversion, Millennium Pharmaceuticals, Inc. agreed to exchange 9,857,143 shares of Series A redeemable convertible preferred stock of DOT Therapeutics-1, Inc., our subsidiary, 2,782,960 shares of our common stock pursuant to and contingent upon the effectiveness of the Conversion, and subject to the satisfaction of the other terms and conditions of the Millenium Stock Exchange Agreement.

For more information, please see the section titled “Business—Material agreements.”

## Investors’ rights agreement

We have entered into an amended and restated investors’ rights agreement, or the IRA, dated February 1, 2021 with certain holders of our then outstanding redeemable convertible preferred shares, including entities with which certain of our executive officers and directors are affiliated. These stockholders are entitled to rights with respect to the registration of their shares under the Securities Act. For a description of these registration rights, see the section titled “Description of capital stock—Registration rights.” In connection with the Conversion, we will enter into a stockholders agreement with the existing holders of our then-converted securities incorporating the terms of the LLC agreement and the IRA.

## LLC agreement

Our LLC agreement governed our operations prior to the consummation of the Conversion. The LLC agreement set forth the authorized classes of Day One LLC’s equity securities, the allocation of profits and losses among the classes and the preferences of the preferred classes. The LLC agreement also set forth the rights of and restrictions on members, including rights with respect to the election of directors, management and certain transfer restrictions on the holders of shares. The LLC agreement also provided for transfer restrictions in respect of securities held by certain holders of our securities, as well as rights of first refusal and co-sale rights in respect of sales of securities by certain holders of our securities. The transfer restrictions, rights of first refusal and co-sale rights under the LLC agreement do not apply to this offering. The LLC agreement included indemnification and exculpation provisions applicable to the directors, officers, members, employees and agents of Day One LLC. Concurrent with the consummation of the Conversion, the LLC agreement will terminate.

## Directed share program

At our request, the underwriters have reserved up to 5% of the shares offered by this prospectus for sale at the initial public offering price to certain individuals through a directed share program, including our directors, officers, employees, business associates and related persons. See the section titled “Underwriting” for additional information.

## Equity grants to executive officers and directors

We have granted incentive shares to certain of our executive officers and certain directors, as more fully described in the sections titled “Executive compensation” and “Management—Non-employee director compensation,” respectively.

## Director and executive officer compensation

Please see the sections titled “Management—Non-employee director compensation” and “Executive compensation” for information regarding the compensation of our directors and executive officers.

## Employment agreements

We have entered into employment offer letters with certain of our executive officers, and we intend to enter into amended and restated employment offer letters with our executive officers prior to the completion of this offering. For more information regarding these agreements, see the section titled “Executive compensation—Employment arrangements with our named executive officers.”

## Indemnification agreements

We have previously entered into, and in connection with this offering will enter into, new indemnification agreements with each of our directors and executive officers. The indemnification agreements, our restated certificate of incorporation and our restated bylaws will require us to indemnify our directors to the fullest extent not prohibited by Delaware law. Subject to certain limitations, our restated bylaws also require us to advance expenses incurred by our directors and officers. For more information regarding these agreements, see the section titled “Executive compensation—Limitations on liability and indemnification matters” for information on our indemnification arrangements with our directors and executive officers.

## Corporate conversion

Immediately prior to the effectiveness of the registration statement of which this prospectus forms a part, we will convert from a Delaware limited liability company to a Delaware corporation, which we refer to as the Conversion. See the “Conversion” section of this prospectus for a further discussion of the Conversion.

## Policies and procedures for related party transactions

In connection with this offering, we intend to adopt a written related person transactions policy that provides that our executive officers, directors, nominees for election as a director, beneficial owners of more than 5% of our common stock, and any members of the immediate family of and any entity affiliated with any of the foregoing persons, are not permitted to enter into a material related person transaction with us without the review and approval of our audit committee, or a committee composed solely of independent directors in the event it is inappropriate for our audit committee to review such transaction due to a conflict of interest. We expect the policy to provide that any request for us to enter into a transaction with an executive officer, director, nominee for election as a director, beneficial owner of more than 5% of our common stock or with any of their immediate family members or affiliates in which the amount involved exceeds $120,000 will be presented to our audit committee (or the committee composed solely of independent directors, if applicable) for review, consideration and approval. In approving or rejecting any such proposal, we expect that our audit committee (or the committee composed solely of independent directors, if applicable) will consider the relevant facts and circumstances available and deemed relevant to the audit committee (or the committee composed solely of independent directors, if applicable), including, but not limited to, whether the transaction is on terms no less favorable than terms generally available to an unaffiliated third party under the same or similar circumstances and the extent of the related person’s interest in the transaction.

# Principal stockholders

The following table and accompanying footnotes set forth certain information with respect to the beneficial ownership of our common stock as of April, 15, 2021 by:

- each of our directors;
- each of our named executive officers;
- all of our current directors and executive officers as a group; and
- each person, or group of affiliated persons, who beneficially owned more than 5% of our outstanding shares of common stock.

We have determined beneficial ownership in accordance with the rules of the SEC, and the information is not necessarily indicative of beneficial ownership for any other purpose. Except as indicated by the footnotes below, we believe, based on information furnished to us, that the persons and entities named in the table below have sole voting and sole investment power with respect to all shares of common stock that they beneficially owned, subject to applicable community property laws. Under the rules of the SEC, a person is also deemed to be a beneficial owner of any securities of which that person has a right to acquire beneficial ownership within 60 days. Unless otherwise indicated, the address of each beneficial owner listed in the table below is c/o Day One Biopharmaceuticals Holding Company, LLC, 395 Oyster Point Blvd., Suite 217, South San Francisco, CA 94080.

The number of shares beneficially owned in the following table assumes completion of the Conversion, and conversion into common stock of the preferred stock issued in the Conversion, and assumes that incentive shares in Day One LLC convert at a rate of one share of common stock for each incentive share in accordance with the distribution provisions of the LLC Agreement immediately prior to the completion of this offering. The column titled "Percentage of shares beneficially owned—Before offering" is based on a total of 21,703,057 shares of our common stock outstanding as of March 31, 2021, including 1,859,939 shares of unvested restricted stock converted from our unvested incentive shares, and assuming the automatic conversion of all outstanding shares of our preferred stock into an aggregate of 13,973,939 shares of our common stock upon the closing of this offering and assuming the issuance of 2,782,960 shares of common stock to Millennium Pharmaceuticals, Inc. in exchange for 9,857,143 shares of Series A redeemable convertible preferred stock of DOT Therapeutics-1, Inc., our subsidiary, pursuant to the Millennium Stock Exchange Agreement and the Plan of Conversion and subject to the satisfaction of the other terms and conditions of the Millennium Stock Exchange Agreement. The column titled "Percentage of shares beneficially owned—After offering" is based on shares of our common stock to be outstanding after this offering, including the shares of our common stock that we are selling in this offering. The table below excludes any purchases that may be made through our directed share program and any potential purchases in this offering by the beneficial owners identified in the table below.

| | Beneficial ownership prior to this offering | | Beneficial ownership after this offering | |
|---|---|---|---|---|
| **Name of beneficial owner** | **Number** | **Percent (%)** | **Number** | **Percent (%)** |
| **Directors and Named Executive Officers:** | | | | |
| Jeremy Bender, Ph.D., M.B.A.(1) | 656,853 | 3.0 | | |
| Samuel Blackman, M.D., Ph.D.(2) | 1,000,000 | 4.6 | | |
| Julie Grant, M.Phil., M.B.A.(3) | 200,000 | * | | |
| Daniel Becker, M.D., Ph.D. | — | * | | |
| Derek DiRocco, Ph.D.(4) | — | * | | |
| Michael Gladstone | — | * | | |
| Natalie Holles(5) | 40,900 | * | | |
| John A. Josey, Ph.D., M.B.A.(6) | 28,559 | * | | |
| Saira Ramasastry, M.S., M.Phil. | — | * | | |
| All executive officers and directors as a group (10 persons) | 2,167,212 | 10.0 | | |
| **Other 5% Stockholders:** | | | | |
| AI Day 1 LLC(7) | 3,657,108 | 16.9 | | |
| Entities affiliated with Atlas Venture Fund XI, L.P.(8) | 3,657,108 | 16.9 | | |
| Canaan XI, L.P.(9) | 4,611,891 | 21.2 | | |
| Millennium Pharmaceuticals, Inc.(10) | 2,782,960 | 12.0 | | |
| Entities affiliated with RA Capital Healthcare Fund, L.P.(11) | 1,275,522 | 5.9 | | |

* Represents beneficial ownership of less than one percent.

(1) Represents 656,853 shares of common stock issuable upon the conversion of incentive shares upon the Conversion, all of which shares are unvested and subject to forfeiture to us if Dr. Bender ceases to provide service to us prior to the vesting of the shares.

(2) Represents 1,000,000 shares of common stock issuable upon the Conversion, of which 41,674 shares are unvested and subject to forfeiture to us if Dr. Blackman ceases to provide service to us prior to the vesting of the shares.

(3) Represents 200,000 shares of common stock.

(4) Dr. DiRocco has notified us that he will resign from our board of directors effective immediately prior to the Conversion and the effectiveness of the registration statement of which this prospectus forms a part.

(5) Represents 40,900 shares of common stock issuable upon the conversion of incentive shares upon the Conversion, all of which shares 40,048 are unvested and subject to forfeiture to us if Ms. Holles ceases to provide service to us prior to the vesting of the shares.

(6) Represents 28,559 shares of common stock issuable upon the conversion of incentive shares upon the Conversion, of which 25,585 shares are unvested and subject to forfeiture to us if Dr. Josey ceases to provide service to us prior to the vesting of the shares.

(7) Represents (i) 3,338,228 shares of common stock issuable upon the automatic conversion of shares of our Series A redeemable convertible preferred stock upon the closing of this offering and (ii) 318,880 shares of common stock issuable upon the automatic conversion of shares of our Series B redeemable convertible preferred stock upon the closing of this offering, in each case held by AI Day 1 LLC. Access Industries Management, LLC ("Access LLC") is AI Day 1 LLC's manager. Len Blavatnik is the manager of Access LLC, and may be deemed to have sole voting and dispositive power over the shares held by AI Day 1 LLC. Daniel Becker, M.D., Ph.D., a member of our board of directors, is a biotechnology principal of Access Industries, an affiliate of AI Day 1 LLC, and does not have voting or dispositive power over the shares held by AI Day 1 LLC and disclaims beneficial ownership of the shares held by AI Day I LLC. The address of AI Day 1 LLC is c/o Access Industries, Inc., 40 West 57th Street, 28th Floor, New York, NY 10019.

(8) Represents (i) 3,338,228 shares of common stock issuable upon the automatic conversion of shares of our Series A redeemable convertible preferred stock upon the closing of this offering held by Atlas Venture Fund XI, L.P., or Atlas Fund XI, and (ii) 318,880 shares of common stock issuable upon the automatic conversion of shares of our Series B redeemable convertible preferred stock upon the closing of this offering held by Atlas Venture Opportunity Fund I, L.P., or Atlas Fund I. Michael Gladstone, a member of our Board, is a Partner at Atlas Venture Life Science Advisors, LLC, or Atlas Venture, and disclaims beneficial ownership of the shares noted herein except to the extent of his pecuniary interest therein. Atlas Venture is the manager of Atlas Fund XI and Atlas Fund I. Atlas Venture Associates XI, L.P. is the general partner of Atlas Fund XI, and Atlas Venture Associates XI, LLC is the general partner of Atlas Venture Associates XI, L.P. Bruce Booth, Jean- Francois Formela, David Grayzel, Jason Rhodes and Kevin Bitterman are the members of Atlas Venture Associates XI, LLC and collectively make investment decisions on behalf of Atlas Venture Associates XI, LLC. Each of Atlas Fund XI, Atlas Venture Associates XI, L.P., and Atlas Venture Associates XI, LLC may be deemed to beneficially own the shares held by Atlas Fund XI. Atlas Venture Associates Opportunity I, L.P. is the general partner of Atlas Fund I, and Atlas Venture Associates Opportunity I, LLC, or AVAO, LLC, is the general partner of Atlas Venture Associates Opportunity I, L.P. Bruce Booth, Jean-Francois Formela, David Grayzel, Jason Rhodes and Kevin Bitterman are the members of AVAO, LLC and collectively make investment decisions on behalf of AVAO, LLC. Each of Atlas Fund I, Atlas Venture Associates Opportunity I, L.P. and AVAO, LLC may be deemed to beneficially own the shares held by Atlas Fund I. The mailing address of Atlas Fund XI and Atlas Fund I is 300 Technology Square, 8th Floor, Cambridge, MA 02139.

(9) Represents (i) 1,396,073 shares of common stock held by Canaan XI, L.P., or Canaan XI, (ii) 3,152,042 shares of common stock issuable upon the automatic conversion of shares of our Series A redeemable convertible preferred stock upon the closing of this offering held by Canaan XI and (iii) 63,776 shares of common stock issuable upon the automatic conversion of shares of our Series B redeemable convertible preferred stock upon the closing of this offering held by Canaan XI. Julie Grant, our co-founder and a member of our Board, is a non-managing member of Canaan Partners XI LLC, the general partner of Canaan XI LP. Canaan Partners XI LLC may be deemed to have sole investment and voting power over the shares held by Canaan XI L.P. Investment, voting and dispositive decisions with respect to the shares held by Canaan XI L.P. are made by the managers of Canaan Partners XI LLC, collectively. The address for Canaan XI L.P. is 285 Riverside Avenue, Suite 250, Westport, CT 06880.

(10) Represents 2,782,960 shares of common stock to be issued to Millennium Pharmaceuticals, Inc. pursuant to and contingent upon the effectiveness of the Conversion in exchange for 9,857,143 shares of Series A redeemable convertible preferred stock of DOT Therapeutics-1 Inc., our subsidiary, pursuant to the terms of the Millennium Stock Exchange Agreement, entered into between us and Millennium Pharmaceuticals, Inc., and the Plan of Conversion. For a more complete description of the Millennium Stock Exchange Agreement, please see the section titled "Business—Material agreements." Millennium Pharmaceuticals, Inc. is an affiliate of Takeda Pharmaceutical Company Limited. The address for Millennium Pharmaceuticals, Inc. is 40 Landsdowne Street, Cambridge, MA 02139.

(11) Represents (i) 1,084,194 shares of common stock issuable upon the automatic conversion of shares of our Series B redeemable convertible preferred stock upon the closing of this offering held by RA Capital Healthcare Fund, L.P., or RA Healthcare, and (ii) 191,328 shares of common stock issuable upon the automatic conversion of shares of our Series B redeemable convertible preferred stock upon the closing of this offering held by RA Capital Nexus Fund II, L.P., or Nexus Fund. RA Capital Management, L.P. is the investment manager for RA Healthcare and Nexus Fund. The general partner of RA Capital Management, L.P. is RA Capital Management GP, LLC, of which Peter Kolchinsky and Rajeev Shah are the managing members. RA Capital Management, L.P., RA Capital Management GP, LLC, Peter Kolchinsky and Rajeev Shah may be deemed to have voting and investment power over the shares held of record by RA Healthcare and Nexus Fund. RA Capital Management, L.P., RA Capital Management GP, LLC, Peter Kolchinsky and Rajeev Shah disclaim beneficial ownership of such shares, except to the extent of any pecuniary interest therein. The address of the entities listed above is 200 Berkeley Street, 18th Floor, Boston, MA 02116.

# Description of capital stock

*The following description summarizes the most important terms of our capital stock, our restated certificate of incorporation and our restated bylaws, as each will be in effect following this offering, and give effect to the Conversion. Because it is only a summary, it does not contain all the information that may be important to you. For a complete description, you should refer to our restated certificate of incorporation and restated bylaws, which are included as exhibits to the registration statement of which this prospectus forms a part, and to the applicable provisions of Delaware law.*

## General

Upon the completion of this offering, our authorized capital stock will consist of 500,000,000 shares of common stock, $0.0001 par value per share, and 10,000,000 shares of undesignated preferred stock, $0.0001 par value per share. Our board of directors is authorized, without stockholder approval, to issue additional shares of our capital stock.

## Common stock

### *Dividend rights*

Subject to preferences that may apply to any shares of preferred stock outstanding at the time, the holders of our common stock are entitled to receive dividends out of funds legally available if our board of directors, in its discretion, determines to issue dividends and then only at the times and in the amounts that our board of directors may determine. See the section entitled “Dividend policy.”

### *Voting rights*

Except as otherwise expressly provided in our restated certificate of incorporation or as required by applicable law, on any matter that is submitted to a vote by our stockholders, holders of our common stock are entitled to one vote per share of common stock. We have not provided for cumulative voting for the election of directors in our restated certificate of incorporation, which means that holders of a majority of the shares of our common stock are able to elect all of our directors. Our restated certificate of incorporation established a classified board of directors, to be divided into three classes with staggered three-year terms. Only one class of directors will be elected at each annual meeting of our stockholders, with the other classes continuing for the remainder of their respective three-year terms.

### *No preemptive or similar rights*

Our common stock is not entitled to preemptive rights, and neither is subject to conversion, redemption or sinking fund provisions.

### *Right to receive liquidation distributions*

Upon our liquidation, dissolution or winding-up, the assets legally available for distribution to our stockholders would be distributable ratably among the holders of our common stock and any participating preferred stock outstanding at that time, subject to prior satisfaction of all outstanding debt and liabilities and the preferential rights of and the payment of liquidation preferences, if any, on any outstanding shares of preferred stock.

## Preferred stock

Following the Conversion and immediately prior to the completion of this offering, each outstanding share of convertible preferred stock will be converted into one share of common stock.

Following the completion of this offering, our board of directors is authorized, subject to limitations prescribed by Delaware law, to issue preferred stock in one or more series, to establish from time to time the number of shares to be included in each series and to fix the designation, powers, preferences and rights of the shares of each series and any of their qualifications, limitations or restrictions, in each case without further vote or action by our stockholders. Our board of directors is also able to increase or decrease the number of shares of any series of preferred stock, but not below the number of shares of that series then outstanding, without any further vote or action by our stockholders. Our board of directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of our common stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the effect of delaying, deferring or preventing a change in control of our company and might adversely affect the market price of our common stock and the voting and other rights of the holders of our common stock. We have no current plan to issue any shares of preferred stock.

## Registration rights

As of March 31, 2021, the holders of 13,973,939 shares of our common stock are entitled to rights with respect to the registration of these shares under the Securities Act as described below. We refer to these shares collectively as registrable securities. These rights are provided under the terms of the IRA between us and the holders of these shares, which was entered into in connection with our redeemable convertible preferred share financings prior to our IPO.

### *Demand registration rights*

Beginning 180 days after the completion of the IPO, if the holders of at least 40% of the then-outstanding registrable securities may request the registration under the Securities Act of any registrable securities, if the anticipated aggregate offering price, net of selling expenses, would exceed $10.0 million, we are obligated to provide notice of such request to all holders of registration rights and, as soon as practicable and in any event within 60 days, file a Form S-1 registration statement under the Securities Act covering all registrable securities that the initiating holders requested to be registered and any additional registrable securities requested to be included in such registration by any other holders. We are only required to file two registration statements that are declared effective upon exercise of these demand registration rights. We may postpone taking action with respect to such filing not more than once during any 12-month period for a period of not more than 120 days, if after receiving a request for registration, we furnish to the holders requesting such registration a certificate signed by our Chief Executive Officer stating that, in the good faith judgment of our board of directors, it would be materially detrimental to us and our stockholders.

### *Form S-3 registration rights*

The holders of at least 60% of the then-outstanding registrable securities can request that we register all or part of their shares on Form S-3 if we are eligible to file a registration statement on Form S-3 and if the aggregate price to the public of the shares offered, net of selling expenses, is at least $2.5 million. The stockholders may only require us to effect two registration statements on Form S-3 in a 12-month period. We may postpone taking action with respect to such filing not more than once during any 12-month period for a

period of not more than 120 days, if after receiving a request for registration, we furnish to the holders requesting such registration a certificate signed by our Chief Executive Officer stating that, in the good faith judgment of our board of directors, it would be materially detrimental to us and our stockholders.

### *Piggyback registration rights*

If we register any of our securities for public sale in cash, holders of then-outstanding registrable securities or their permitted transferees will have the right to include their registrable securities in the registration statement. However, this right does not apply to a registration relating to any of our employee benefit plans, a corporate reorganization or transaction under Rule 145 of the Securities Act, a registration that requires information that is not substantially the same as the information required to be included in a registration statement covering the sale of the registrable securities, or a registration in which the only common stock being registered is common stock issuable upon conversion of debt securities that are also being registered or issuable upon the exercise of warrants. In an underwritten offering, if the total number of securities requested by stockholders to be included in the offering exceeds the number of securities to be sold (other than by us) that the underwriters determine in their reasonable discretion is compatible with the success of the offering, then we will be required to include only that number of securities that the underwriters and us, in our sole discretion, determine will not jeopardize the success of the offering. If the underwriters determine that less than all the registrable securities requested to be registered can be included in the offering, the number of registrable shares to be registered will be allocated among holders of our registrable securities, in proportion to the amount of registrable securities owned by each such holder. However, the number of shares to be registered by holders of registrable securities cannot be reduced unless all other securities (other than as offered by us) are first entirely excluded. The number of registrable securities included in the offering may not be reduced below 20% of the total number of securities included in such offering, except for in connection with an initial public offering, in which case the underwriters may exclude these holders entirely.

### *Expenses of registration rights*

We generally will pay all expenses, other than underwriting discounts and selling commissions incurred in connection with each of the registrations described above, including the reasonable fees and disbursements of one counsel for the selling holders.

### *Expiration of registration rights*

The registration rights described above will expire, with respect to any particular holder of these rights, on the earliest to occur of (a) upon a deemed liquidation event, as defined in our certificate of incorporation, (b) at such time that our common stock is trading on a national securities exchange and all of the holder’s registrable securities can be sold during a three-month period without registration or (c) upon the fifth anniversary of the completion of the IPO.

## Anti-takeover provisions

The provisions of DGCL our restated certificate of incorporation and our restated bylaws that will become effective upon the completion of this offering could have the effect of delaying, deferring or discouraging another person from acquiring control of our company. These provisions, which are summarized below, may have the effect of discouraging takeover bids. They are also designed, in part, to encourage persons seeking to acquire control of us to negotiate first with our board of directors. We believe that the benefits of increased protection of our potential ability to negotiate with an unfriendly or unsolicited acquirer outweigh the disadvantages of discouraging a proposal to acquire us because negotiation of these proposals could result in an improvement of their terms.

### *Delaware law*

Upon completion of this offering we will be subject to the provisions of Section 203 of the DGCL regulating corporate takeovers. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years following the date on which the person became an interested stockholder unless:

- prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding, but not the outstanding voting stock owned by the interested stockholder, (i) shares owned by persons who are directors and also officers and (ii) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- at or subsequent to the date of the transaction, the business combination is approved by the board of directors of the corporation and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66.67% of the outstanding voting stock that is not owned by the interested stockholder.

Generally, a business combination includes a merger, asset or stock sale, or other transaction or series of transactions together resulting in a financial benefit to the interested stockholder. An interested stockholder is a person who, together with affiliates and associates, owns or, within three years prior to the determination of interested stockholder status, did own 15% or more of a corporation's outstanding voting stock. We expect the existence of this provision to have an anti-takeover effect with respect to transactions our board of directors does not approve in advance. We also anticipate that Section 203 may also discourage attempts that might result in a premium over the market price for the shares of common stock held by stockholders.

### *Anti-takeover effects of certain provisions of our restated certificate of incorporation and restated bylaws*

Our restated certificate of incorporation and our restated bylaws to be in effect upon the completion of this offering will include a number of provisions that could deter hostile takeovers or delay or prevent changes in control of our company, including the following:

- *Board of directors vacancies*. Our restated certificate of incorporation and restated bylaws authorizes only our board of directors to fill vacant directorships, including newly created seats. In addition, the number of directors constituting our board of directors is permitted to be set only by a resolution adopted by a majority vote of our entire board of directors. These provisions would prevent a stockholder from increasing the size of our board of directors and then gaining control of our board of directors by filling the resulting vacancies with its own nominees. This makes it more difficult to change the composition of our board of directors but promotes continuity of management.
- *Classified board*. Our restated certificate of incorporation and restated bylaws provide that our board of directors is classified into three classes of directors, each with staggered three-year terms. A third party may be discouraged from making a tender offer or otherwise attempting to obtain control of us as it is more difficult and time consuming for stockholders to replace a majority of the directors on a classified board of directors. See the section entitled "Management—Board composition."

- *Stockholder action; special meetings of stockholders*. Our restated certificate of incorporation provide that our stockholders may not take action by written consent, but may only take action at annual or special meetings of our stockholders. As a result, a holder controlling a majority of our capital stock would not be able to amend our restated bylaws or remove directors without holding a meeting of our stockholders called in accordance with our restated bylaws. Further, our restated bylaws provide that special meetings of our stockholders may be called only by a majority of our board of directors, the chair of our board of directors, our Chief Executive Officer or our President, thus prohibiting a stockholder from calling a special meeting. These provisions might delay the ability of our stockholders to force consideration of a proposal or for stockholders controlling a majority of our capital stock to take any action, including the removal of directors.
- *Advance notice requirements for stockholder proposals and director nominations*. Our restated bylaws provide advance notice procedures for stockholders seeking to bring business before our annual meeting of stockholders or to nominate candidates for election as directors at our annual meeting of stockholders. Our restated bylaws also specify certain requirements regarding the form and content of a stockholder's notice. These provisions might preclude our stockholders from bringing matters before our annual meeting of stockholders or from making nominations for directors at our annual meeting of stockholders if the proper procedures are not followed. We expect that these provisions might also discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of our company.
- *No cumulative voting*. The DGCL provides that stockholders are not entitled to the right to cumulate votes in the election of directors unless a corporation's certificate of incorporation provides otherwise. Our restated certificate of incorporation and restated bylaws do not provide for cumulative voting.
- *Directors removed only for cause*. Our restated certificate of incorporation provides that stockholders may remove directors only for cause and only by the affirmative vote of the holders of at least two-thirds of our outstanding common stock.
- *Amendment of charter provisions*. Any amendment of the above provisions in our restated certificate of incorporation would require approval by holders of at least two-thirds of our outstanding common stock.
- *Issuance of undesignated preferred stock*. Our board of directors has the authority, without further action by the stockholders, to issue up to 10,000,000 shares of undesignated preferred stock with rights and preferences, including voting rights, designated from time to time by our board of directors. The existence of authorized but unissued shares of preferred stock would enable our board of directors to render more difficult or to discourage an attempt to obtain control of us by merger, tender offer, proxy contest or other means.
- *Choice of forum*. Our restated certificate of incorporation will provide that, to the fullest extent permitted by law, the Court of Chancery of the State of Delaware will be the exclusive forum for any derivative action or proceeding brought on our behalf; any action asserting a breach of fiduciary duty; any action asserting a claim against us arising pursuant to the DGCL, our restated certificate of incorporation or our restated bylaws; or any action asserting a claim against us that is governed by the internal affairs doctrine. The enforceability of similar choice of forum provisions in other companies' certificates of incorporation has been challenged in legal proceedings, and it is possible that a court could find these types of provisions to be inapplicable or unenforceable. Our restated bylaws also provide that the federal district courts of the United States of America will, to the fullest extent permitted by law, be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act, or the Federal Forum Provision. While there can be no assurance that federal or state courts will follow the holding of the Delaware Supreme Court which recently found that such provisions are facially valid under Delaware law or determine that the Federal

Forum Provision should be enforced in a particular case, application of the Federal Forum Provision means that suits brought by our stockholders to enforce any duty or liability created by the Securities Act must be brought in federal court and cannot be brought in state court. Neither the exclusive forum provision nor the Federal Forum Provision applies to suits brought to enforce any duty or liability created by the Exchange Act. Section 27 of the Exchange Act creates exclusive federal jurisdiction over all claims brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. Accordingly, actions by our stockholders to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder also must be brought in federal court. Our stockholders will not be deemed to have waived our compliance with the federal securities laws and the regulations promulgated thereunder. Any person or entity purchasing or otherwise acquiring or holding any interest in any of our securities shall be deemed to have notice of and consented to our exclusive forum provisions, including the Federal Forum Provision. These provisions may limit a stockholder's ability to bring a claim in a judicial forum of their choosing for disputes with us or our directors, officers, or other employees, or the underwriters of any offering giving rise to such dispute, which may discourage lawsuits against us and our directors, officers, and other employees and the underwriters of this offering.

## Transfer agent and registrar

The transfer agent and registrar for our common stock and non-voting common stock is American Stock Transfer & Trust Company, LLC. The address of the transfer agent and registrar is 6201 15th Avenue, Brooklyn, New York 11219.

## The Nasdaq Global Market listing

We have applied to have our common stock listed on the Nasdaq Global Market under the symbol "DAWN."

# Shares eligible for future sale

Prior to this offering, there has been no public market for our common stock, and a liquid trading market for our common stock may not develop or be sustained after this offering. Future sales of substantial amounts of our common stock in the public market or the anticipation of these sales, could adversely affect market prices prevailing from time to time and could impair our ability to raise capital through sales of equity securities.

Based on the number of shares of common stock outstanding as of March 31, 2021, upon the completion of this offering, we will have a total of shares of our common stock outstanding, assuming (i) the issuance of shares of common stock in this offering, which does not contemplate exercise of the underwriters' option to purchase additional shares in connection with this offering, (ii) the Conversion and (iii) the conversion of all outstanding shares of our redeemable convertible preferred stock into an aggregate of shares of our common stock upon the closing of this offering. Of these outstanding shares, all of the shares of common stock sold in this offering will be freely tradable, except that any shares purchased in this offering by our affiliates, as that term is defined in Rule 144 under the Securities Act can only be sold in compliance with the Rule 144 limitations described below or in compliance with the lock-up agreements.

The remaining outstanding shares of our common stock will be deemed "restricted securities" as defined in Rule 144. Restricted securities may be sold in the public market only if they are registered under the Securities Act or if they qualify for an exemption from registration under Rule 144 or Rule 701 promulgated under the Securities Act, which rules are summarized below.

## Lock-up and market standoff agreements

All of our directors and officers and substantially all of our security holders are subject to lock-up agreements or market standoff provisions that prohibit them from, among other things, offering for sale, selling, contracting to sell, granting any option for the sale of, transferring or otherwise disposing of any shares of our common stock, options or warrants to acquire shares of our common stock or any security or instrument related to our common stock, or entering into any swap, hedge or other arrangement that transfers any of the economic consequences of ownership of our common stock, for a period of 180 days following the date of this prospectus without the prior written consent of J.P. Morgan Securities LLC, subject to certain exceptions. J.P. Morgan Securities LLC may, in its sole discretion and at any time or from time to time before the termination of the 180-day period release all or any portion of the securities subject to lock-up agreements. See the section entitled "Underwriting."

## Rule 144

In general, under Rule 144 as currently in effect, a person who is not deemed to have been one of our affiliates for purposes of the Securities Act at any time during the 90 days preceding a sale and who has beneficially owned the shares proposed to be sold for at least six months, including the holding period of any prior owner other than our affiliates, is entitled to sell those shares without complying with the manner of sale, volume limitation or notice provisions of Rule 144, subject to compliance with the public information requirements of Rule 144. If such a person has beneficially owned the shares proposed to be sold for at least one year, including the holding period of any prior owner other than our affiliates, then that person would be entitled to sell those shares without complying with any of the requirements of Rule 144.

In general, under Rule 144, as currently in effect, our affiliates or persons selling shares on behalf of our affiliates are entitled to sell upon expiration of the lock-up and market standoff agreements described above, within any three-month period, a number of shares that does not exceed the greater of:

- 1% of the number of shares of our common stock then outstanding, which will equal approximately shares immediately after this offering assuming no exercise of the underwriters' option to purchase additional shares; or
- the average reported weekly trading volume of our common stock on Nasdaq during the four calendar weeks preceding the filing of a notice on Form 144 with respect to that sale.

Sales under Rule 144 by our affiliates or persons selling shares on behalf of our affiliates are also subject to certain manner of sale provisions and notice requirements and to the availability of current public information about us.

## Rule 701

Rule 701 generally allows a stockholder who purchased shares of our common stock pursuant to a written compensatory plan or contract and who is not deemed to have been an affiliate of our company during the immediately preceding 90 days to sell these shares in reliance upon Rule 144, but without being required to comply with the public information, holding period, volume limitation or notice provisions of Rule 144. Rule 701 also permits affiliates of our company to sell their Rule 701 shares under Rule 144 without complying with the holding period requirements of Rule 144. All holders of Rule 701 shares are subject to the lock-up and market standoff agreements described above.

## Form S-8 registration statement

In connection with this offering, we intend to file a registration statement on Form S-8 under the Securities Act covering all of the shares of our common stock subject to outstanding options, outstanding shares of restricted stock and the shares of our common stock reserved for issuance under our stock plans. We expect to file this registration statement as soon as permitted under the Securities Act. However, the shares registered on Form S-8 may be subject to the volume limitations and the manner of sale, notice and public information requirements of Rule 144 and will not be eligible for resale until expiration of the lock-up and market standoff agreements to which they are subject.

## Registration rights

We have granted demand, piggyback and Form S-3 registration rights to certain of our stockholders to sell our common stock. Registration of the sale of these shares under the Securities Act would result in these shares becoming freely tradable without restriction under the Securities Act immediately upon the effectiveness of the registration, except for shares purchased by affiliates. For a further description of these rights, see the section entitled "Description of capital stock—Registration rights."

# Material U.S. federal income tax consequences to non-U.S. holders

The following summary describes the material U.S. federal income tax consequences of the acquisition, ownership and disposition of our common stock acquired in this offering by Non-U.S. Holders (as defined below). This discussion does not address all aspects of U.S. federal income taxes, does not discuss the potential application of the alternative minimum tax, the special tax accounting rules under the Code or the Medicare Contribution tax on net investment income and does not deal with state or local tax laws, U.S. federal non-income tax laws, such as gift and estate tax laws, except to the limited extent provided below, or any non-U.S. tax laws that may be relevant to Non-U.S. Holders in light of their particular circumstances.

Special rules different from those described below may apply to certain Non-U.S. Holders that are subject to special treatment under the Code, such as:

- insurance companies, banks, investment funds and other financial institutions;
- tax-exempt organizations (including private foundations) and tax-qualified retirement plans;
- foreign governments and international organizations;
- broker-dealers and traders in securities;
- U.S. expatriates and certain former citizens or long-term residents of the United States;
- “qualified foreign pension funds” as defined in Section 897(l)(2) of the Code and entities, all of the interests of which are held by qualified foreign pension funds;
- persons that own, or are deemed to own, more than 5% of our capital stock;
- “controlled foreign corporations,” “passive foreign investment companies” and corporations that accumulate earnings to avoid U.S. federal income tax;
- persons that hold our common stock as part of a “straddle,” “hedge,” “conversion transaction,” “synthetic security” or integrated investment or other risk reduction strategy;
- persons who do not hold our common stock as a capital asset within the meaning of Section 1221 of the Code (generally, for investment purposes); and
- partnerships and other entities or arrangements treated as pass-through or disregarded entities for U.S. federal income tax purposes, and investors in such entities (regardless of their places of organization or formation).

Such Non-U.S. Holders are urged to consult their own tax advisors to determine the U.S. federal, state, local and other tax consequences that may be relevant to them.

Furthermore, the discussion below is based upon the provisions of the Code, and U.S. Treasury Regulations, rulings and judicial decisions thereunder as of the date hereof, and such authorities may be repealed, revoked or modified, possibly retroactively, or could be subject to differing interpretations which could result in U.S. federal income tax consequences different from those discussed below. We have not requested a ruling from the Internal Revenue Service, or the IRS, with respect to the statements made and the conclusions reached in the following summary, and there can be no assurance that the IRS will not take a contrary position regarding the tax consequences described herein, or that any such contrary position would not be sustained by a court.

PERSONS CONSIDERING THE PURCHASE OF OUR COMMON STOCK PURSUANT TO THIS OFFERING SHOULD CONSULT THEIR OWN TAX ADVISORS CONCERNING THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF

ACQUIRING, OWNING AND DISPOSING OF OUR COMMON STOCK IN LIGHT OF THEIR PARTICULAR SITUATIONS AS WELL AS ANY CONSEQUENCES ARISING UNDER THE LAWS OF ANY OTHER TAXING JURISDICTION, INCLUDING ANY STATE, LOCAL OR NON-U.S. TAX CONSEQUENCES OR ANY U.S. FEDERAL NON-INCOME TAX CONSEQUENCES, AND THE POSSIBLE APPLICATION OF TAX TREATIES.

For the purposes of this discussion, a “Non-U.S. Holder” is a beneficial owner of common stock, other than a partnership or other entity or arrangement treated as a pass-through entity, that is not, for U.S. federal income tax purposes, (a) an individual who is a citizen or resident of the United States, (b) a corporation (or other entity taxable as a corporation for U.S. federal income tax purposes), created or organized in or under the laws of the United States, any state thereof or the District of Columbia, (c) an estate, the income of which is subject to U.S. federal income taxation regardless of its source, or (d) a trust if it (1) is subject to the primary supervision of a court within the United States and one or more U.S. persons (within the meaning of Section 7701(a)(30) of the Code) have the authority to control all substantial decisions of the trust or (2) has a valid election in effect under applicable U.S. Treasury Regulations to be treated as a U.S. person.

If you are an individual non-U.S. citizen, you may, in some cases, be deemed to be a resident alien (as opposed to a nonresident alien) by virtue of being present in the United States for at least 31 days in the calendar year and for an aggregate of at least 183 days during a three-year period ending in the current calendar year. Generally, for this purpose, all the days present in the current year, one-third of the days present in the immediately preceding year, and one-sixth of the days present in the second preceding year, are counted.

Resident aliens are generally subject to U.S. federal income tax as if they were U.S. citizens. Individuals who are uncertain of their status as resident or nonresident aliens for U.S. federal income tax purposes are urged to consult their own tax advisors regarding the U.S. federal income tax consequences of the ownership or disposition of our common stock.

## Distributions

We do not expect to make any distributions on our common stock in the foreseeable future. If we do make distributions on our common stock, however, such distributions will constitute dividends for U.S. tax purposes to the extent paid out of our current or accumulated earnings and profits (as determined under U.S. federal income tax principles). Distributions in excess of our current and accumulated earnings and profits will constitute a return of capital that is applied against and reduces, but not below zero, a Non-U.S. Holder’s adjusted tax basis in our common stock. Any remaining excess will be treated as gain realized on the sale or exchange of our common stock as described below under the section entitled “—Gain on disposition of our common stock.”

Subject to the discussions below under the sections entitled “—Backup withholding and information reporting” and “—Foreign accounts,” any distribution on our common stock that is treated as a dividend paid to a Non-U.S. Holder that is not effectively connected with the Non-U.S. Holder’s conduct of a trade or business in the United States will generally be subject to U.S. federal withholding tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty between the United States and the Non-U.S. Holder’s country of residence. To obtain a reduced rate of withholding under a treaty, a Non-U.S. Holder generally will be required to provide the applicable withholding agent with a properly executed IRS Form W-8BEN, IRS Form W-8BEN-E or other appropriate form, certifying the Non-U.S. Holder’s entitlement to benefits under that treaty. Such form must be provided prior to the payment of dividends and must be updated periodically. If a Non-U.S. Holder holds stock through a financial institution or other agent acting on the holder’s behalf, the holder will be required to provide appropriate documentation to such agent. The holder’s agent may then be required to provide certification to the applicable withholding agent, either directly or through other intermediaries. If you are eligible for a reduced rate of U.S. withholding tax under an income tax treaty, you should consult with your

own tax advisor to determine if you are able to obtain a refund of any excess amounts withheld by timely filing an appropriate claim for a refund with the IRS.

We generally are not required to withhold tax on dividends paid to a Non-U.S. Holder that are effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, are attributable to a permanent establishment that the holder maintains in the United States) if a properly executed IRS Form W-8ECI, stating that the dividends are so connected, is furnished to the applicable withholding agent. In general, such effectively connected dividends will be subject to U.S. federal income tax on a net income basis at the same rates applicable to U.S. persons. A corporate Non-U.S. Holder receiving effectively connected dividends may also be subject to an additional "branch profits tax," which is imposed, under certain circumstances, at a rate of 30% (or such lower rate as may be specified by an applicable treaty) on the corporate Non-U.S. Holder's effectively connected earnings and profits, subject to certain adjustments.

See also the section below entitled "—Foreign accounts" for additional withholding rules that may apply to dividends paid to certain foreign financial institutions or non-financial foreign entities.

## Gain on disposition of our common stock

Subject to the discussions below under the sections entitled "—Backup withholding and information reporting" and "—Foreign accounts," a Non-U.S. Holder generally will not be subject to U.S. federal income or withholding tax with respect to gain realized on a sale or other disposition of our common stock unless (a) the gain is effectively connected with a trade or business of the Non-U.S. Holder in the United States (and, if required by an applicable income tax treaty, is attributable to a permanent establishment that the holder maintains in the United States), (b) the Non-U.S. Holder is a nonresident alien who is an individual and is present in the United States for 183 or more days in the taxable year of the disposition and certain other conditions are met, or (c) we are or have been a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Code at any time within the shorter of the five-year period preceding such disposition or the Non-U.S. Holder's holding period in the common stock.

If you are a Non-U.S. Holder described in (a) above, you will be required to pay tax on the net gain derived from the sale at the same U.S. federal income tax rates applicable to U.S. persons. Corporate Non-U.S. Holders described in (a) above may also be subject to the additional branch profits tax at a 30% rate (or such lower rate as may be specified by an applicable income tax treaty) of its effectively connected earnings and profits for the taxable year, as adjusted for certain items. If you are an individual Non-U.S. Holder described in (b) above, you will be required to pay a flat 30% tax on the gain derived from the sale, which gain may be offset by certain U.S. source capital losses (even though you are not considered a resident of the United States), provided you have timely filed U.S. federal income tax returns with respect to such losses. With respect to (c) above, in general, we would be a United States real property holding corporation if our U.S. real property interests, as defined in the Code and the U.S. Treasury Regulations, comprised (by fair market value) at least half of our worldwide real property interests plus our other assets used or held for use in a trade or business. We believe that we are not, and do not anticipate becoming, a United States real property holding corporation. However, there can be no assurance that we will not become a United States real property holding corporation in the future. Even if we were to be treated as a United States real property holding corporation, gain realized by a Non-U.S. Holder on a disposition of our common stock would not be subject to U.S. federal income tax so long as (1) the Non-U.S. Holder owned, directly, indirectly or constructively, no more than 5% of our common stock at all times within the shorter of (i) the five-year period preceding the disposition or (ii) the Non-U.S. Holder's holding period and (2) our common stock is regularly traded on an established securities market. There can be no assurance that our common stock will qualify as regularly traded on an established securities market.

## U.S. federal estate tax

The estates of nonresident alien individuals generally are subject to U.S. federal estate tax on property with a U.S. situs. Because we are a U.S. corporation, our common stock will be U.S. situs property and, therefore, will be included in the taxable estate of a nonresident alien decedent, unless an applicable estate tax treaty between the United States and the decedent's country of residence provides otherwise. The terms "resident" and "nonresident" are defined differently for U.S. federal estate tax purposes than for U.S. federal income tax purposes. Investors are urged to consult their own tax advisors regarding the U.S. federal estate tax consequences of the ownership or disposition of our common stock.

## Backup withholding and information reporting

Generally, we or certain financial middlemen must report information to the IRS with respect to any dividends we pay on our common stock including the amount of any such dividends, the name and address of the recipient, and the amount, if any, of tax withheld. A similar report is sent to the holder to whom any such dividends are paid. Pursuant to tax treaties or certain other agreements, the IRS may make its reports available to tax authorities in the recipient's country of residence.

Dividends paid by us (or our paying agents) to a Non-U.S. Holder may also be subject to U.S. federal backup withholding. U.S. federal backup withholding generally will not apply to a Non-U.S. Holder who provides a properly executed IRS Form W-8BEN, IRS Form W-8BEN-E, or other IRS Form W-8, as applicable, or otherwise establishes an exemption, provided that the applicable withholding agent does not have actual knowledge or reason to know the holder is a U.S. person.

Under U.S. federal income tax law, U.S. information reporting and backup withholding requirements generally will apply to the proceeds of a disposition of our common stock effected by or through a U.S. office of any broker, U.S. or non-U.S., unless the Non-U.S. Holder provides a properly executed IRS Form W-8BEN, IRS Form W-8BEN-E, or other IRS Form W-8, as applicable, or otherwise establishes an exemption. Generally, U.S. information reporting and backup withholding requirements will not apply to a payment of disposition proceeds to a Non-U.S. Holder where the transaction is effected outside the United States through a non-U.S. office of a non-U.S. broker. Information reporting and backup withholding requirements may, however, apply to a payment of disposition proceeds if the broker has actual knowledge, or reason to know, that the holder is, in fact, a U.S. person. For information reporting purposes, certain brokers with substantial U.S. ownership or operations will generally be treated in a manner similar to U.S. brokers.

Backup withholding is not an additional tax. If backup withholding is applied to you, you should consult with your own tax advisor to determine whether you have overpaid your U.S. federal income tax, and whether you are able to obtain a tax refund or credit of the overpaid amount.

## Foreign accounts

In addition, U.S. federal withholding taxes may apply under the Foreign Account Tax Compliance Act, and the Treasury Regulations and other official IRS guidance issued thereunder, or FATCA, on certain types of payments, including dividends paid to non-U.S. financial institutions and certain other non-U.S. entities. Specifically, a 30% withholding tax may be imposed on dividends on our common stock paid to a "foreign financial institution" or a "non-financial foreign entity" (each as defined in the Code), unless (1) the foreign financial institution agrees to undertake certain diligence and reporting obligations, (2) the non-financial foreign entity either certifies it does not have any "substantial United States owners" (as defined in the Code) or furnishes identifying information regarding each substantial United States owner, or (3) the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from these rules. The 30%

federal withholding tax described in this paragraph cannot be reduced under an income tax treaty with the United States. If the payee is a foreign financial institution and is subject to the diligence and reporting requirements in (1) above, it must enter into an agreement with the U.S. Department of the Treasury requiring, among other things, that it undertake to identify accounts held by certain “specified United States persons” or “United States-owned foreign entities” (each as defined in the Code), annually report certain information about such accounts, and withhold 30% on certain payments to non-compliant foreign financial institutions and certain other account holders. Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States may be subject to different rules. Under the applicable Treasury Regulations and administrative guidance, withholding under FATCA generally also would apply to payments of gross proceeds from the sale or other disposition of common stock. Under proposed regulations, however, no withholding will apply with respect to payments of gross proceeds. The preamble to the proposed regulations specifies that taxpayers are permitted to rely on such proposed regulations pending finalization.

Prospective investors should consult their tax advisors regarding the potential application of withholding under FATCA to their investment in our common stock.

EACH PROSPECTIVE INVESTOR SHOULD CONSULT ITS OWN TAX ADVISOR REGARDING THE TAX CONSEQUENCES OF PURCHASING, HOLDING AND DISPOSING OF OUR COMMON STOCK, INCLUDING THE CONSEQUENCES OF ANY PROPOSED CHANGE IN APPLICABLE LAW, AS WELL AS TAX CONSEQUENCES ARISING UNDER ANY STATE, LOCAL, NON-U.S. OR U.S. FEDERAL NON-INCOME TAX LAWS SUCH AS ESTATE AND GIFT TAX OR UNDER ANY APPLICABLE TAX TREATY.

# Underwriting

We are offering the shares of common stock described in this prospectus through a number of underwriters. J.P. Morgan Securities LLC, Cowen and Company, LLC and Piper Sandler & Co. are acting as joint book-running managers of the offering and as representatives of the underwriters. We have entered into an underwriting agreement with the underwriters. Subject to the terms and conditions of the underwriting agreement, we have agreed to sell to the underwriters, and each underwriter has severally agreed to purchase, at the public offering price less the underwriting discounts and commissions set forth on the cover page of this prospectus, the number of shares of common stock listed next to its name in the following table:

| Name | Number of shares |
|---|---|
| J.P. Morgan Securities LLC | |
| Cowen and Company, LLC | |
| Piper Sandler & Co. | |
| Wedbush Securities Inc. | |
| Total | |

The underwriters are committed to purchase all the shares of common stock offered by us if they purchase any shares. The underwriting agreement also provides that if an underwriter defaults, the purchase commitments of non-defaulting underwriters may also be increased or the offering may be terminated.

The underwriters propose to offer the common stock directly to the public at the initial public offering price set forth on the cover page of this prospectus and to certain dealers at that price less a concession not in excess of $ per share. After the initial offering of the shares to the public, if all of the shares of common stock are not sold at the initial public offering price, the underwriters may change the offering price and the other selling terms. Sales of any shares made outside of the United States may be made by affiliates of the underwriters.

The underwriters have an option to buy up to additional shares of common stock from us to cover sales of shares by the underwriters which exceed the number of shares specified in the table above. The underwriters have 30 days from the date of this prospectus to exercise this option to purchase additional shares. If any shares are purchased with this option to purchase additional shares, the underwriters will purchase shares in approximately the same proportion as shown in the table above. If any additional shares of common stock are purchased, the underwriters will offer the additional shares on the same terms as those on which the shares are being offered.

The underwriting fee is equal to the public offering price per share of common stock less the amount paid by the underwriters to us per share of common stock. The underwriting fee is $ per share. The following table shows the per share and total underwriting discounts and commissions to be paid to the underwriters assuming both no exercise and full exercise of the underwriters' option to purchase additional shares.

| | Without exercise of option to purchase additional shares | With exercise of full option to purchase additional shares |
|---|---|---|
| Per share | $ | $ |
| Total | $ | $ |

We estimate that the total expenses of this offering, including registration, filing and listing fees, printing fees and legal and accounting expenses, but excluding the underwriting discounts and commissions, will be approximately $ . We have agreed to reimburse the underwriters for expenses relating to the clearance of this offering with the Financial Industry Regulatory Authority, Inc. in an amount up to $ .

A prospectus in electronic format may be made available on the web sites maintained by one or more underwriters, or selling group members, if any, participating in the offering. The underwriters may agree to allocate a number of shares to underwriters and selling group members for sale to their online brokerage account holders. Internet distributions will be allocated by the representatives to underwriters and selling group members that may make Internet distributions on the same basis as other allocations.

We have agreed that we will not, subject to certain exceptions, (i) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, hedge, lend, or otherwise transfer or dispose of, directly or indirectly, or submit to, or file with the SEC a registration statement under the Securities Act relating to, any shares of our common stock or securities convertible into or exercisable or exchangeable for any shares of our common stock, or publicly disclose the intention to make any offer, sale, pledge, hedge, loan, disposition or filing, or (ii) enter into any swap, hedging, or other arrangement that transfers all or a portion of the economic consequences associated with the ownership of any shares of common stock or any such other securities (regardless of whether any of these transactions are to be settled by the delivery of shares of common stock or such other securities, in cash or otherwise), in each case without the prior written consent of J.P. Morgan Securities LLC for a period of 180 days after the date of this prospectus, other than the shares of our common stock to be sold in this offering.

The restrictions on our actions, as described above, do not apply to certain transactions, including (i) the issuance of shares of common stock or securities convertible into or exercisable for shares of common stock pursuant to the conversion or exchange of convertible or exchangeable securities or the exercise of warrants or options (including net exercise) or the settlement of RSUs (including net settlement) issued pursuant to our equity compensation plan, in each case described in this prospectus; (ii) grants of stock options, stock awards, restricted stock, RSUs, or other equity awards and the issuance of shares of our common stock or securities convertible into or exercisable or exchangeable for shares of our common stock (whether upon the exercise of stock options or otherwise) to our employees, officers, directors, advisors, or consultants pursuant to the terms of an equity compensation plan in effect as of the closing of this offering and described in this prospectus, provided that such recipients enter into a lock-up agreement with the underwriters; (iii) the issuance of up to 5% of the outstanding shares of our common stock, or securities convertible into, exercisable for, or which are otherwise exchangeable for, our common stock, immediately following the closing of this offering, in acquisitions, collaboration, joint ventures or other similar strategic transactions, provided that such recipients enter into a lock-up agreement with the underwriters; or (iv) our filing of any registration statement on Form S-8 relating to securities granted or to be granted pursuant to any plan in effect on the date of the underwriting agreement and described in this prospectus or any assumed benefit plan pursuant to an acquisition or similar strategic transaction.

Our directors and executive officers, and substantially all of our securityholders (such persons, the “lock-up parties”) have entered into lock-up agreements with the underwriters prior to the commencement of this offering pursuant to which each lock-up party, with limited exceptions, for a period of 180 days after the date of this prospectus (such period, the “restricted period”), may not and may not cause any of their direct or indirect affiliates to, without the prior written consent of J.P. Morgan Securities LLC, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, hedge, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of our common stock or any securities convertible into or exercisable or exchangeable for our common stock (including, without limitation, common stock or such other securities which may be deemed to be beneficially owned by such lock-up parties in accordance with the rules and regulations of the SEC and securities which may be issued upon exercise of a stock option or warrant (collectively with the common stock, the “lock-up securities”)), (ii) enter into any hedging, swap or other agreement or transaction that transfers, in whole or in

part, any of the economic consequences of ownership of the lock-up securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of lock-up securities, in cash or otherwise, (iii) make any demand for or exercise any right with respect to the registration of any lock-up securities, or (iv) publicly disclose the intention to do any of the foregoing. Such persons or entities have further acknowledged that these undertakings preclude them from engaging in any hedging or other transactions or arrangements (including, without limitation, any short sale or the purchase or sale of, or entry into, any put or call option, or combination thereof, forward, swap or any other derivative transaction or instrument, however described or defined) designed or intended, or which could reasonably be expected to lead to or result in, a sale or disposition or transfer (by any person or entity, whether or not a signatory to such agreement) of any economic consequences of ownership, in whole or in part, directly or indirectly, of any lock-up securities, whether any such transaction or arrangement (or instrument provided for thereunder) would be settled by delivery of lock-up securities, in cash or otherwise.

The restrictions described in the immediately preceding paragraph and contained in the lock-up agreements between the underwriters and the lock-up parties do not apply, subject in certain cases to various conditions, to certain transactions, including:

(i) transfers or dispositions of lock-up securities:

(1) as a bona fide gift or gifts, or for bona fide estate planning purposes,

(2) by will or intestacy,

(3) to any trust for the direct or indirect benefit of the lock-up party or any immediate family member,

(4) to a corporation, partnership, limited liability company or other entity of which the lock-up party or its immediate family are the legal and beneficial owner of all of the outstanding equity securities or similar interests,

(5) to a nominee or custodian of a person or entity to whom a disposition or transfer would be permissible under clauses (a) through (d) above,

(6) in the case of a corporation, partnership, limited liability company, trust or other business entity, (A) to another corporation, partnership, limited liability company, trust or other business entity that is an affiliate of the lock-up party, or to any investment fund or other entity controlling, controlled by, managing or managed by or under common control with the lock-up party or its affiliates or (B) as part of a distribution to members, partners, stockholders or other equityholders of the lock-up party;

(7) by operation of law,

(8) to us (A) from an employee upon death, disability or termination of employment of such employee, or (B) pursuant to a right of first refusal that we have with respect to transfers of such shares of our common stock or other securities,

(9) as part of a sale of lock-up securities acquired in this offering (other than issuer-directed shares of common stock purchased in the offering by our officers or directors) or in open market transactions after the completion of this offering,

(10) to us in connection with the vesting, settlement or exercise of restricted stock units, options, warrants or other rights to purchase shares of our common stock (including “net” or “cashless” exercise), including for the payment of exercise price and tax and remittance payments, or

(11) pursuant to a bona fide third-party tender offer, merger, consolidation or other similar transaction approved by our board of directors and made to all of our shareholders involving a change in control, provided

that if such transaction is not completed, all such lock-up securities would remain subject to the restrictions in the immediately preceding paragraph;

(b) exercise of the outstanding options, settlement of restricted stock units or other equity awards, or the exercise of outstanding warrants granted pursuant to plans described in this prospectus, provided that any lock-up securities received upon such exercise, vesting or settlement would be subject to restrictions similar to those in the immediately preceding paragraph;

(c) the conversion of outstanding preferred stock, warrants to acquire preferred stock, or convertible securities into shares of our common stock or warrants to acquire shares of our common stock, provided that any such shares of common stock or warrants received upon such conversion would be subject to restrictions similar to those in the immediately preceding paragraph;

(d) the conversion or transfer of membership interests in Day One Biopharmaceuticals Holding Company, LLC for equity interests in Day One Biopharmaceuticals, Inc. in connection with the consummation of this offering as described in this prospectus, provided that any such shares of common stock or other securities of Day One Biopharmaceuticals, Inc. received by lock-up parties upon such transfer would be subject to restrictions similar to those in the immediately preceding paragraph; and

(e) the establishment by lock-up parties of trading plans under Rule 10b5-1 under the Exchange Act for the transfer of shares of lock-up securities, provided that (1) such plan does not provide for the transfer of lock-up securities during the restricted period and (2) no filing by any party under the Exchange Act or other public announcement shall be required or made voluntarily in connection with such trading plan during the restricted period.

J.P. Morgan Securities LLC, in its sole discretion, may release the securities subject to any of the lock-up agreements with the underwriters described above, in whole or in part at any time.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act.

We have applied to list our shares of common stock on the Nasdaq Global Market under the symbol “DAWN.”

In connection with this offering, the underwriters may engage in stabilizing transactions, which involves making bids for, purchasing and selling shares of common stock in the open market for the purpose of preventing or retarding a decline in the market price of the common stock while this offering is in progress. These stabilizing transactions may include making short sales of common stock, which involves the sale by the underwriters of a greater number of shares of common stock than they are required to purchase in this offering, and purchasing shares of common stock on the open market to cover positions created by short sales. Short sales may be “covered” shorts, which are short positions in an amount not greater than the underwriters’ option to purchase additional shares referred to above, or may be “naked” shorts, which are short positions in excess of that amount. The underwriters may close out any covered short position either by exercising their option to purchase additional shares, in whole or in part, or by purchasing shares in the open market. In making this determination, the underwriters will consider, among other things, the price of shares available for purchase in the open market compared to the price at which the underwriters may purchase shares through the option to purchase additional shares. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market that could adversely affect investors who purchase in this offering. To the extent that the underwriters create a naked short position, they will purchase shares in the open market to cover the position.

The underwriters have advised us that, pursuant to Regulation M of the Securities Act, they may also engage in other activities that stabilize, maintain or otherwise affect the price of the common stock, including the

imposition of penalty bids. This means that if the representatives of the underwriters purchase common stock in the open market in stabilizing transactions or to cover short sales, the representatives can require the underwriters that sold those shares as part of this offering to repay the underwriting discount received by them.

These activities may have the effect of raising or maintaining the market price of the common stock or preventing or retarding a decline in the market price of the common stock, and, as a result, the price of the common stock may be higher than the price that otherwise might exist in the open market. If the underwriters commence these activities, they may discontinue them at any time. The underwriters may carry out these transactions on Nasdaq, in the over-the-counter market or otherwise.

Prior to this offering, there has been no public market for our common stock. The initial public offering price will be determined by negotiations between us and the representatives of the underwriters. In determining the initial public offering price, we and the representatives of the underwriters expect to consider a number of factors including:

- the information set forth in this prospectus and otherwise available to the representatives;
- our prospects and the history and prospects for the industry in which we compete;
- an assessment of our management;
- our prospects for future earnings;
- the general condition of the securities markets at the time of this offering;
- the recent market prices of, and demand for, publicly traded common stock of generally comparable companies; and
- other factors deemed relevant by the underwriters and us.

Neither we nor the underwriters can assure investors that an active trading market will develop for shares of our common stock, or that the shares will trade in the public market at or above the initial public offering price.

## Directed share program

At our request, the underwriters have reserved up to 5% of the shares offered by this prospectus for sale at the initial public offering price to certain individuals through a directed share program, including our directors, officers, employees, business associates and related persons. The sales will be made at our direction by J.P. Morgan Securities LLC and its affiliates through a directed share program. The number of shares of our common stock available for sale to the general public in this offering will be reduced to the extent that such persons purchase such reserved shares. Any reserved shares not so purchased will be offered by the underwriters to the general public on the same terms as the other shares of common stock offered by this prospectus. We have agreed to indemnify the underwriters against certain liabilities and expenses, including liabilities under the Securities Act, in connection with the sales of the shares reserved for the directed share program.

## Other relationships

Certain of the underwriters and their affiliates have provided in the past to us and our affiliates and may provide from time to time in the future certain commercial banking, financial advisory, investment banking and other services for us and such affiliates in the ordinary course of their business, for which they have received and may continue to receive customary fees and commissions. In addition, from time to time, certain of the

underwriters and their affiliates may effect transactions for their own account or the account of customers, and hold on behalf of themselves or their customers, long or short positions in our debt or equity securities or loans, and may do so in the future.

## Selling restrictions

Other than in the United States, no action has been taken by us or the underwriters that would permit a public offering of the securities offered by this prospectus in any jurisdiction where action for that purpose is required. The securities offered by this prospectus may not be offered or sold, directly or indirectly, nor may this prospectus or any other offering material or advertisements in connection with the offer and sale of any such securities be distributed or published in any jurisdiction, except under circumstances that will result in compliance with the applicable rules and regulations of that jurisdiction. Persons into whose possession this prospectus comes are advised to inform themselves about and to observe any restrictions relating to the offering and the distribution of this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities offered by this prospectus in any jurisdiction in which such an offer or a solicitation is unlawful.

## Notice to prospective investors in the European Economic Area

In relation to each Member State of the European Economic Area (each a “Relevant State”), no shares have been offered or will be offered pursuant to the offering to the public in that Relevant State prior to the publication of a prospectus in relation to the shares which has been approved by the competent authority in that Relevant State or, where appropriate, approved in another Relevant State and notified to the competent authority in that Relevant State, all in accordance with the Prospectus Regulation, except that the shares may be offered to the public in that Relevant State at any time:

(i) to any legal entity which is a qualified investor as defined under Article 2 of the Prospectus Regulation;

(ii) to fewer than 150 natural or legal persons (other than qualified investors as defined under Article 2 of the Prospectus Regulation), subject to obtaining the prior consent of the representatives for any such offer; or

(iii) in any other circumstances falling within Article 1(4) of the Prospectus Regulation,

provided that no such offer of shares shall require us or any of the representatives to publish a prospectus pursuant to Article 3 of the Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation.

For the purposes of this provision, the expression an “offer to the public” in relation to shares in any Relevant State means the communication in any form and by any means of sufficient information on the terms of the offer and any shares to be offered so as to enable an investor to decide to purchase or subscribe for any shares, and the expression “Prospectus Regulation” means Regulation (EU) 2017/1129.

## Notice to prospective investors in the United Kingdom

No shares have been offered or will be offered pursuant to the offering to the public in the United Kingdom prior to the publication of a prospectus in relation to the shares which has been approved by the Financial Conduct Authority, except that the shares may be offered to the public in the United Kingdom at any time:

(i) to any legal entity which is a qualified investor as defined under Article 2 of the UK Prospectus Regulation;

(ii) to fewer than 150 natural or legal persons (other than qualified investors as defined under Article 2 of the UK Prospectus Regulation), subject to obtaining the prior consent of the representatives for any such offer; or

(iii) in any other circumstances falling within Section 86 of the FSMA,

provided that no such offer of the shares shall require the Issuer or any Manager to publish a prospectus pursuant to Section 85 of the FSMA or supplement a prospectus pursuant to Article 23 of the UK Prospectus Regulation. For the purposes of this provision, the expression an "offer to the public" in relation to the shares in the United Kingdom means the communication in any form and by any means of sufficient information on the terms of the offer and any shares to be offered so as to enable an investor to decide to purchase or subscribe for any shares and the expression "UK Prospectus Regulation" means Regulation (EU) 2017/1129 as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018.

## Notice to prospective investors in Canada

The shares may be sold only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 Prospectus Exemptions or subsection 73.3(1) of the Securities Act (Ontario), and are permitted clients, as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations. Any resale of the shares must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 of National Instrument 33-105 Underwriting Conflicts, or NI 33-105, the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

## Notice to prospective investors in Switzerland

The shares may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange, or SIX, or on any other stock exchange or regulated trading facility in Switzerland. This document does not constitute a prospectus within the meaning of, and has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering or marketing material relating to the shares or the offering may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering or marketing material relating to the offering, the Company, the shares have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of shares will not be supervised by, the Swiss Financial Market Supervisory Authority FINMA, or FINMA, and the offer of shares has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes, or CISA. The investor protection afforded to acquirers of interests in collective investment schemes under the CISA does not extend to acquirers of shares.

## Notice to prospective investors in the Dubai International Financial Centre

This document relates to an Exempt Offer in accordance with the Markets Rules 2012 of the Dubai Financial Services Authority, or DFSA. This document is intended for distribution only to persons of a type specified in the Markets Rules 2012 of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved this prospectus supplement nor taken steps to verify the information set forth herein and has no responsibility for this document. The securities to which this document relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the securities offered should conduct their own due diligence on the securities. If you do not understand the contents of this document you should consult an authorized financial advisor.

In relation to its use in the DIFC, this document is strictly private and confidential and is being distributed to a limited number of investors and must not be provided to any person other than the original recipient, and may not be reproduced or used for any other purpose. The interests in the securities may not be offered or sold directly or indirectly to the public in the DIFC.

## Notice to prospective investors in the United Arab Emirates

The shares have not been, and are not being, publicly offered, sold, promoted or advertised in the United Arab Emirates (including the Dubai International Financial Centre) other than in compliance with the laws of the United Arab Emirates (and the Dubai International Financial Centre) governing the issue, offering and sale of securities. Further, this prospectus does not constitute a public offer of securities in the United Arab Emirates (including the Dubai International Financial Centre) and is not intended to be a public offer. This prospectus has not been approved by or filed with the Central Bank of the United Arab Emirates, the Securities and Commodities Authority or the Dubai Financial Services Authority.

## Notice to prospective investors in Australia

This prospectus:

- does not constitute a disclosure document or a prospectus under Chapter 6D.2 of the Corporations Act 2001 (Cth), or the Corporations Act;
- has not been, and will not be, lodged with the Australian Securities and Investments Commission, or the ASIC, as a disclosure document for the purposes of the Corporations Act and does not purport to include the information required of a disclosure document for the purposes of the Corporations Act; and
- may only be provided in Australia to select investors who are able to demonstrate that they fall within one or more of the categories of investors, available under section 708 of the Corporations Act, or the Exempt Investors.

The shares may not be directly or indirectly offered for subscription or purchased or sold, and no invitations to subscribe for or buy the shares may be issued, and no draft or definitive offering memorandum, advertisement or other offering material relating to any shares may be distributed in Australia, except where disclosure to investors is not required under Chapter 6D of the Corporations Act or is otherwise in compliance with all applicable Australian laws and regulations. By submitting an application for the shares, you represent and warrant to us that you are an Exempt Investor.

As any offer of shares under this document will be made without disclosure in Australia under Chapter 6D.2 of the Corporations Act, the offer of those securities for resale in Australia within 12 months may, under section

707 of the Corporations Act, require disclosure to investors under Chapter 6D.2 if none of the exemptions in section 708 applies to that resale. By applying for the shares you undertake to us that you will not, for a period of 12 months from the date of issue of the shares, offer, transfer, assign or otherwise alienate those shares to investors in Australia except in circumstances where disclosure to investors is not required under Chapter 6D.2 of the Corporations Act or where a compliant disclosure document is prepared and lodged with ASIC.

## Notice to prospective investors in Japan

The shares have not been and will not be registered pursuant to Article 4, Paragraph 1 of the Financial Instruments and Exchange Act. Accordingly, none of the shares nor any interest therein may be offered or sold, directly or indirectly, in Japan or to, or for the benefit of, any "resident" of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan or to or for the benefit of a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Act and any other applicable laws, regulations and ministerial guidelines of Japan in effect at the relevant time.

## Notice to prospective investors in Hong Kong

The shares have not been offered or sold and will not be offered or sold in Hong Kong, by means of any document, other than (a) to "professional investors" as defined in the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong), or the SFO, of Hong Kong and any rules made thereunder; or (b) in other circumstances which do not result in the document being a "prospectus" as defined in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) of Hong Kong, or the CO, or which do not constitute an offer to the public within the meaning of the CO. No advertisement, invitation or document relating to the shares has been or may be issued or has been or may be in the possession of any person for the purposes of issue, whether in Hong Kong or elsewhere, which is directed at, or the contents of which are likely to be accessed or read by, the public of Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" as defined in the SFO and any rules made thereunder.

## Notice to prospective investors in Singapore

Each representative has acknowledged that this prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, each representative has represented and agreed that it has not offered or sold any shares or caused the shares to be made the subject of an invitation for subscription or purchase and will not offer or sell any shares or cause the shares to be made the subject of an invitation for subscription or purchase, and has not circulated or distributed, nor will it circulate or distribute, this prospectus or any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares, whether directly or indirectly, to any person in Singapore other than:

(i) to an institutional investor (as defined in Section 4A of the Securities and Futures Act (Chapter 289) of Singapore, as modified or amended from time to time, or the SFA) pursuant to Section 274 of the SFA;

(ii) to a relevant person (as defined in Section 275(2) of the SFA) pursuant to Section 275(1) of the SFA, or any person pursuant to Section 275(1A) of the SFA, and in accordance with the conditions specified in Section 275 of the SFA; or

(iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the shares are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

(i) a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or

(ii) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

securities or securities-based derivatives contracts (each term as defined in Section 2(1) of the SFA) of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the shares pursuant to an offer made under Section 275 of the SFA except:

(i) to an institutional investor or to a relevant person, or to any person arising from an offer referred to in Section 275(1A) or Section 276(4)(i)(B) of the SFA;

(ii) where no consideration is or will be given for the transfer;

(iii) where the transfer is by operation of law;

(iv) as specified in Section 276(7) of the SFA; or

(v) as specified in Regulation 37A of the Securities and Futures (Offers of Investments) (Securities and Securities-based Derivatives Contracts) Regulations 2018.

Singapore SFA Product Classification—In connection with Section 309B of the SFA and the CMP Regulations 2018, unless otherwise specified before an offer of the shares, the Company has determined, and hereby notifies all relevant persons (as defined in Section 309A(1) of the SFA), that the shares are "prescribed capital markets products" (as defined in the CMP Regulations 2018) and Excluded Investment Products (as defined in MAS Notice SFA 04-N12: Notice on the Sale of Investment Products and MAS Notice FAA-N16: Notice on Recommendations on Investment Products).

## Notice to prospective investors in Bermuda

Shares may be offered or sold in Bermuda only in compliance with the provisions of the Investment Business Act of 2003 of Bermuda which regulates the sale of securities in Bermuda. Additionally, non-Bermudian persons (including companies) may not carry on or engage in any trade or business in Bermuda unless such persons are permitted to do so under applicable Bermuda legislation.

## Notice to prospective investors in Saudi Arabia

This document may not be distributed in the Kingdom of Saudi Arabia except to such persons as are permitted under the Offers of Securities Regulations as issued by the board of the Saudi Arabian Capital Market Authority, or CMA, pursuant to resolution number 2-11-2004 dated 4 October 2004 as amended by resolution number 1-28-2008, as amended. The CMA does not make any representation as to the accuracy or completeness of this document and expressly disclaims any liability whatsoever for any loss arising from, or incurred in reliance upon, any part of this document. Prospective purchasers of the securities offered hereby should conduct their own due diligence on the accuracy of the information relating to the securities. If you do not understand the contents of this document, you should consult an authorized financial adviser.

## Notice to prospective investors in the British Virgin Islands

The shares are not being, and may not be offered to the public or to any person in the British Virgin Islands for purchase or subscription by or on behalf of the Company. The shares may be offered to companies incorporated

under the BVI Business Companies Act, 2004 (British Virgin Islands), or BVI Companies, but only where the offer will be made to, and received by, the relevant BVI Company entirely outside of the British Virgin Islands.

## Notice to prospective investors in China

This prospectus will not be circulated or distributed in the PRC and the shares will not be offered or sold, and will not be offered or sold to any person for re-offering or resale directly or indirectly to any residents of the PRC except pursuant to any applicable laws and regulations of the PRC. Neither this prospectus nor any advertisement or other offering material may be distributed or published in the PRC, except under circumstances that will result in compliance with applicable laws and regulations.

## Notice to prospective investors in Korea

The shares have not been and will not be registered under the Financial Investments Services and Capital Markets Act of Korea and the decrees and regulations thereunder, or the FSCMA, and the shares have been and will be offered in Korea as a private placement under the FSCMA. None of the shares may be offered, sold or delivered directly or indirectly, or offered or sold to any person for re-offering or resale, directly or indirectly, in Korea or to any resident of Korea except pursuant to the applicable laws and regulations of Korea, including the FSCMA and the Foreign Exchange Transaction Law of Korea and the decrees and regulations thereunder, or the FETL. The shares have not been listed on any of the securities exchanges in the world including, without limitation, the Korea Exchange in Korea. Furthermore, the purchaser of the shares shall comply with all applicable regulatory requirements (including but not limited to requirements under the FETL) in connection with the purchase of the shares. By the purchase of the shares, the relevant holder thereof will be deemed to represent and warrant that if it is in Korea or is a resident of Korea, it purchased the shares pursuant to the applicable laws and regulations of Korea.

## Notice to prospective investors in Malaysia

No prospectus or other offering material or document in connection with the offer and sale of the shares has been or will be registered with the Securities Commission of Malaysia, or Commission, for the Commission's approval pursuant to the Capital Markets and Services Act 2007. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares may not be circulated or distributed, nor may the shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Malaysia other than (i) a closed end fund approved by the Commission; (ii) a holder of a Capital Markets Services License; (iii) a person who acquires the shares, as principal, if the offer is on terms that the shares may only be acquired at a consideration of not less than RM250,000 (or its equivalent in foreign currencies) for each transaction; (iv) an individual whose total net personal assets or total net joint assets with his or her spouse exceeds RM3 million (or its equivalent in foreign currencies), excluding the value of the primary residence of the individual; (v) an individual who has a gross annual income exceeding RM300,000 (or its equivalent in foreign currencies) per annum in the preceding twelve months; (vi) an individual who, jointly with his or her spouse, has a gross annual income of RM400,000 (or its equivalent in foreign currencies), per annum in the preceding twelve months; (vii) a corporation with total net assets exceeding RM10 million (or its equivalent in a foreign currencies) based on the last audited accounts; (viii) a partnership with total net assets exceeding RM10 million (or its equivalent in foreign currencies); (ix) a bank licensee or insurance licensee as defined in the Labuan Financial Services and Securities Act 2010; (x) an Islamic bank licensee or takaful licensee as defined in the Labuan Financial Services and Securities Act 2010; and (xi) any other person as may be specified by the Commission; provided that, in the each of the preceding categories (i) to (xi), the distribution of the shares is made by a holder of a Capital Markets Services License who carries on the business of dealing in securities. The distribution in Malaysia of this prospectus is subject to Malaysian laws. This

prospectus does not constitute and may not be used for the purpose of public offering or an issue, offer for subscription or purchase, invitation to subscribe for or purchase any securities requiring the registration of a prospectus with the Commission under the Capital Markets and Services Act 2007.

## Notice to prospective investors in Taiwan

The shares have not been and will not be registered with the Financial Supervisory Commission of Taiwan pursuant to relevant securities laws and regulations and may not be sold, issued or offered within Taiwan through a public offering or in circumstances which constitutes an offer within the meaning of the Securities and Exchange Act of Taiwan that requires a registration or approval of the Financial Supervisory Commission of Taiwan. No person or entity in Taiwan has been authorized to offer, sell, give advice regarding or otherwise intermediate the offering and sale of the shares in Taiwan.

## Notice to prospective investors in South Africa

Due to restrictions under the securities laws of South Africa, no "*offer to the public*" (as such term is defined in the South African Companies Act, No. 71 of 2008 (as amended or re-enacted), or the South African Companies Act) is being made in connection with the issue of the shares in South Africa. Accordingly, this document does not, nor is it intended to, constitute a "*registered prospectus*" (as that term is defined in the South African Companies Act) prepared and registered under the South African Companies Act and has not been approved by, and/or filed with, the South African Companies and Intellectual Property Commission or any other regulatory authority in South Africa. The shares are not offered, and the offer shall not be transferred, sold, renounced or delivered, in South Africa or to a person with an address in South Africa, unless one or other of the following exemptions stipulated in section 96 (1) applies:

| | |
|---|---|
| Section 96 (1) (a) | the offer, transfer, sale, renunciation or delivery is to:<br><br>(i) persons whose ordinary business, or part of whose ordinary business, is to deal in securities, as principal or agent;<br><br>(ii) the South African Public Investment Corporation;<br><br>(iii) persons or entities regulated by the Reserve Bank of South Africa;<br><br>(iv) authorised financial service providers under South African law;<br><br>(v) financial institutions recognised as such under South African law;<br><br>(vi) a wholly-owned subsidiary of any person or entity contemplated in (c), (d) or (e), acting as agent in the capacity of an authorized portfolio manager for a pension fund, or as manager for a collective investment scheme (in each case duly registered as such under South African law); or<br><br>(vii) any combination of the person in (i) to (vi); or |
| Section 96 (1) (b) | the total contemplated acquisition cost of the securities, for any single addressee acting as principal is equal to or greater than ZAR1,000,000 or such higher amount as may be promulgated by notice in the Government Gazette of South Africa pursuant to section 96(2)(a) of the South African Companies Act. |

Information made available in this prospectus should not be considered as "advice" as defined in the South African Financial Advisory and Intermediary Services Act, 2002.

# Legal matters

The validity of the shares of common stock offered by this prospectus will be passed upon for us by Fenwick & West LLP, San Francisco, California. Cooley LLP, San Francisco, California, is acting as counsel for the underwriters in connection with this offering.

# Experts

The consolidated financial statements of Day One Biopharmaceuticals Holding, LLC at December 31, 2019 and 2020, and for each of the two years in the period ended December 31, 2020, appearing in this Prospectus and Registration Statement have been audited by Ernst & Young LLP, Independent Registered Public Accounting Firm, as set forth in their report thereon appearing elsewhere herein, and are included in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

# Additional information

We have filed with the SEC a registration statement on Form S-1 (File Number 333- ) under the Securities Act with respect to the shares of common stock offered hereby. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits filed therewith. For further information about us and the common stock offered hereby, reference is made to the registration statement and the exhibits filed therewith. Statements contained in this prospectus concerning the contents of any contract or any other document are not necessarily complete, please see the copy of the contract or document that has been filed for the complete contents of that contract or document. Each statement in this prospectus relating to a contract or document filed as an exhibit is qualified in all respects by the filed exhibit. The exhibits to the registration statement should be reviewed for the complete contents of these contracts and documents.

The SEC maintains a website, which is located at http://www.sec.gov, that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC. You may access the registration statement of which this prospectus forms a part at the SEC's website. Upon completion of this offering, we will be subject to the information reporting requirements of the Securities Exchange Act of 1934, as amended, and we will file reports, proxy statements and other information with the SEC. We plan to fulfill our obligations with respect to such requirements by filing periodic reports and other information with the SEC. We intend to furnish our stockholders with annual reports containing financial statements certified by an independent registered public accounting firm.

Our website address is www.dayonebio.com. The information contained on, or that can be accessed through, our website is not a part of this prospectus. We have included our website address in this prospectus solely as an inactive textual reference.

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# Report of Independent Registered Public Accounting Firm

To the Members and the Board of Directors of

Day One Biopharmaceuticals Holding Company, LLC

## Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Day One Biopharmaceuticals Holding Company, LLC (the Company) as of December 31, 2019 and 2020, the related consolidated statements of operations and comprehensive loss, redeemable convertible preferred shares, redeemable noncontrolling interest and members' deficit and cash flows for the years then ended, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2019 and 2020 and the results of its operations and its cash flows for the years then ended in conformity with U.S. generally accepted accounting principles.

## Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2021.

Redwood City, California

March 19, 2021

# Day One Biopharmaceuticals Holding Company, LLC
# Consolidated Balance Sheets

| (in thousands, except share amounts) | December 31, 2019 | December 31, 2020 |
|---|---|---|
| **Assets** | | |
| **Current assets:** | | |
| Cash | $ 27,332 | $ 43,728 |
| Prepaid expenses and other current assets | 7 | 1,343 |
| **Total current assets** | 27,339 | 45,071 |
| Property and equipment, net | — | 77 |
| Operating lease right-of-use asset | — | 406 |
| Deposits and other long-term assets | — | 107 |
| **Total assets** | 27,339 | 45,661 |
| **Liabilities, redeemable convertible preferred shares, redeemable convertible noncontrolling interest and members' deficit** | | |
| **Current liabilities:** | | |
| Accounts payable | $ 69 | $ 202 |
| Accrued expenses and other current liabilities | 469 | 1,596 |
| Current portion of operating lease liabilities | — | 198 |
| Derivative tranches liability | 1,483 | — |
| **Total current liabilities** | 2,021 | 1,996 |
| Operating lease liabilities, long-term | — | 204 |
| **Total liabilities** | 2,021 | 2,200 |
| Commitments and contingencies (Note 8) | | |
| Series A redeemable convertible preferred shares, 9,828,498 shares authorized and 5,377,528 shares issued and outstanding at December 31, 2019; 9,828,498 shares authorized, issued and outstanding at December 31, 2020 | 30,504 | 91,964 |
| Redeemable convertible noncontrolling interest | 5,487 | 5,702 |
| **Members' deficit** | | |
| Common shares, 12,424,571 shares authorized and 2,596,073 shares issued and outstanding at December 31, 2019 and 2020 | 2,000 | 2,000 |
| Incentive shares, 1,854,856 shares authorized and 640,184 shares issued and outstanding at December 31, 2019; 1,854,846 shares authorized and 1,768,614 shares issued and outstanding at December 31, 2020 | 111 | 637 |
| Accumulated deficit | (12,784) | (56,842) |
| **Total members' deficit** | (10,673) | (54,205) |
| **Total liabilities, redeemable convertible preferred shares, redeemable convertible noncontrolling interest and members' deficit** | $ 27,339 | $ 45,661 |

*See accompanying notes to the consolidated financial statements.*

# Day One Biopharmaceuticals Holding Company, LLC
# Consolidated Statements of Operations and Comprehensive Loss

| (in thousands, except share and per share amounts) | Year ended December 31, 2019 | 2020 |
|---|---|---|
| **Operating expenses:** | | |
| Research and development | $ 13,899 | $ 9,100 |
| General and administrative | 1,006 | 4,682 |
| **Total operating expenses** | 14,905 | 13,782 |
| **Loss from operations** | (14,905) | (13,782) |
| Interest expense | (2,077) | (30) |
| Other expense | (2) | (31) |
| Changes in fair value of derivative tranches liability | — | (30,000) |
| **Net loss and comprehensive loss** | (16,984) | (43,843) |
| Net loss attributable to redeemable convertible noncontrolling interests | (4,350) | (3,336) |
| Net loss attributable to Day One Biopharmaceuticals Holding Company, LLC members | $ (12,634) | $ (40,507) |
| Net loss per share, basic and diluted | $ (4.96) | $ (17.03) |
| Weighted-average number of common shares used in computing net loss per share, basic and diluted | 2,548,230 | 2,378,286 |

*See accompanying notes to the consolidated financial statements.*

# Day One Biopharmaceuticals Holding Company, LLC

## Consolidated Statements of Redeemable Convertible Preferred Shares, Redeemable Noncontrolling Interest and Members' Deficit

| (in thousands, except share amounts) | Redeemable convertible preferred shares | | Redeemable noncontrolling interest | Common shares | | Incentive shares | | Accumulated deficit | Total members' deficit |
|---|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | | Shares | Amount | Shares | Amount | | |
| Balance at December 31, 2018 | — | $ — | $ — | 4,010,204 | $ — | 13,775 | $ — | $ (150) | $ (150) |
| Issuance of Series A redeemable convertible preferred shares for cash net of issuance costs of $95 and derivative tranches liability of $1,483 | 4,450,971 | 28,422 | — | — | — | — | — | — | — |
| Issuance of Series A redeemable convertible preferred shares upon notes conversion | 926,557 | 2,082 | — | — | — | — | — | — | — |
| Recognition of contingent beneficial conversion feature (Note 9) | — | — | — | — | 2,000 | — | — | — | 2,000 |
| Issuance of redeemable noncontrolling interest | — | — | 9,837 | — | — | — | — | — | — |
| Issuance of incentive shares | — | — | — | — | — | 626,409 | — | — | — |
| Repurchase of common shares | — | — | — | (1,414,131) | — | — | — | — | — |
| Share-based compensation expense | — | — | — | — | — | — | 111 | — | 111 |
| Net loss attributable to redeemable noncontrolling interest | — | — | (4,350) | — | — | — | — | — | — |
| Net loss attributable to Day One Biopharmaceuticals Holding Company, LLC members | — | — | — | — | — | — | — | (12,634) | (12,634) |
| Balance at December 31, 2019 | 5,377,528 | $ 30,504 | $ 5,487 | 2,596,073 | $ 2,000 | 640,184 | $ 111 | $ (12,784) | $ (10,673) |
| Issuance of Series A redeemable convertible preferred shares for cash, net of issuance costs of $22 | 4,450,970 | 29,977 | — | — | — | — | — | — | — |
| Issuance of incentive shares | — | — | — | — | — | 1,333,842 | — | — | — |
| Cancellations of incentive shares | — | — | — | — | — | (205,412) | — | — | — |
| Reclassification of derivative tranches liability upon settlement | — | 31,483 | — | — | — | — | — | — | — |
| Share-based compensation expense | — | — | — | — | — | — | 526 | — | 526 |
| Net loss attributable to redeemable noncontrolling interest | — | — | (3,336) | — | — | — | — | — | — |
| Transfer to redeemable noncontrolling interest related to change in ownership | — | — | 3,551 | — | — | — | — | (3,551) | (3,551) |
| Net loss attributable to Day One Biopharmaceuticals Holding Company, LLC members | — | — | — | — | — | — | — | (40,507) | (40,507) |
| Balance at December 31, 2020 | 9,828,498 | $ 91,964 | $ 5,702 | 2,596,073 | $ 2,000 | 1,768,614 | $ 637 | $ (56,842) | $ (54,205) |

*See accompanying notes to the consolidated financial statements.*

# Day One Biopharmaceuticals Holding Company, LLC
# Consolidated Statements of Cash Flows

| | Year ended December 31, | |
|---|---|---|
| | 2019 | 2020 |
| **Cash flows from operating activities** | | |
| Net loss | $(16,984) | $(43,843) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | |
| Depreciation and amortization expense | — | 16 |
| Amortization of operating right-of-use assets | — | 139 |
| Share-based compensation expense | 111 | 526 |
| Non-cash interest expense | 2,077 | 30 |
| Issuance of shares for research and development, net | 9,837 | — |
| Changes in fair value of derivative tranches liability | — | 30,000 |
| Changes in operating assets and liabilities: | | |
| Prepaid expenses and other current assets | (4) | (1,336) |
| Deposits and other long-term assets | — | (107) |
| Accounts payable | 14 | 132 |
| Accrued expenses and other current liabilities | 434 | 1,127 |
| Operating lease liabilities | — | (173) |
| Net cash used in operating activities | (4,515) | (13,489) |
| **Cash flows from investing activities** | | |
| Purchases of property and equipment | — | (92) |
| Cash used in investing activities | — | (92) |
| **Cash flows from financing activities** | | |
| Proceeds from issuance of Series A redeemable convertible preferred shares, net of issuance costs | 29,905 | 29,977 |
| Proceeds from issuance of convertible notes | 1,000 | — |
| Net cash provided by financing activities | 30,905 | 29,977 |
| Net increase in cash | 26,390 | 16,396 |
| Cash, beginning of year | 942 | 27,332 |
| Cash, end of year | $ 27,332 | $ 43,728 |
| **Supplemental disclosures of noncash activities** | | |
| Recognition of contingent beneficial conversion feature upon notes conversion | $ 2,000 | |
| Issuance of Series A redeemable convertible shares for research and development | $ 9,857 | |
| Conversion of convertible notes and accrued interest into Series A redeemable convertible preferred shares | $ 2,082 | |
| Issuance of derivative tranches liability | $ 1,483 | |
| Transfers to redeemable convertible noncontrolling interest | | $ 3,551 |
| Right of use asset capitalization | | $ 545 |

*See accompanying notes to the consolidated financial statements.*

# Day One Biopharmaceuticals Holding Company, LLC
# Notes to the Consolidated Financial Statements

## 1. Description of business, organization and liquidity

***Organization and business***

Day One Biopharmaceuticals Holding Company, LLC (the "Company"), is a clinical-stage biopharmaceutical company dedicated to developing and commercializing targeted therapies for patients of all ages with genetically defined cancers. The Company's lead product candidate, DAY101, is an oral, brain-penetrant, highly-selective type II pan-RAF kinase inhibitor. The Company was formed as a limited liability company under the laws of the State of Delaware in November 2018, under the name Hero Therapeutics Holding Company, LLC. Subsequently, the Company changed its name to Day One Therapeutics Holding Company, LLC in December 2018 and to Day One Biopharmaceuticals Holding Company, LLC in March 2020. The Company has two subsidiaries: Day One Biopharmaceuticals, Inc. (formerly Hero Therapeutics Inc.), a wholly owned subsidiary incorporated in Delaware in November 2018, and DOT Therapeutics-1, Inc. ("DOT-1"), a majority-owned subsidiary incorporated in Delaware in December 2019.

***Liquidity***

The Company has incurred significant operating losses since inception and has relied primarily on private equity and convertible note financings to fund its operations. At December 31, 2020, the Company had an accumulated members' deficit of $56.8 million. The Company expects to continue to incur substantial losses, and its ability to achieve and sustain profitability will depend on the successful development, approval and commercialization of product candidates and on the achievement of sufficient revenues to support its cost structure. The Company may never achieve profitability, and unless and until then, the Company will need to continue to raise additional capital. Management expects that existing cash and cash equivalents, and cash received in connection with its redeemable convertible preferred shares private financing in February 2021 (Note 17) will be sufficient to fund its current operating plan for at least the next 12 months from the date of issuance of these consolidated financial statements.

***COVID-19 pandemic***

In March 2020, the World Health Organization declared the global novel coronavirus disease 2019 ("COVID-19"), outbreak a pandemic. International and U.S. governmental authorities in impacted regions are taking actions in an effort to slow the spread of COVID-19, including issuing varying forms of "stay-at-home" orders, and restricting business functions outside of one's home. In response, the Company has closed its administrative office and implemented a work-from-home policy for its employees, and the Company may take further actions that alter its operations as may be required by federal, state, or local authorities, or which the Company determines is in its best interests. The global COVID-19 pandemic continues to evolve rapidly, and the Company will continue to monitor it closely. While its operations to date have not been significantly impacted by the COVID-19 pandemic, the Company cannot at this time predict the specific extent, duration, or full impact that the COVID-19 pandemic will have on its business, financial condition and operations, including ongoing and planned clinical trials and clinical development timelines, particularly as the Company advances its product candidates to clinical development, the continued spread of COVID-19 and the measures taken by the governmental authorities could disrupt the supply chain and the manufacture or shipment of drug substances and finished drug products for its product candidates for use in its clinical trials, impede its clinical trial

initiation and recruitment and the ability of patients to continue in clinical trials, impede testing, monitoring, data collection and analysis and other related activities. The COVID-19 pandemic could also potentially affect the business of the United States Food and Drug Administration ("FDA") or other regulatory authorities, which could result in delays in meetings related to its ongoing and planned clinical trials. The Company's clinical trials may also experience interruptions due to the COVID-19 pandemic, as hospitals prioritize their resources towards the COVID-19 pandemic. The impact of the COVID-19 pandemic on the Company's financial performance will depend on future developments, including the duration and spread of the pandemic, its impact on its clinical trial enrollment, trial sites, clinical research organizations ("CROs"), contract manufacturing organizations ("CMOs"), and other third parties with whom the Company does business, its impact on regulatory authorities and its key scientific and management personnel, progress of vaccination and related governmental advisories and restrictions. These developments and the impact of the COVID-19 pandemic on the financial markets and the overall economy are highly uncertain and cannot be predicted. If the financial markets or the overall economy are impacted for an extended period, the Company's business may be materially adversely affected.

## 2. Summary of significant accounting policies

***Basis of presentation***

The accompanying consolidated financial statements are prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP") and include the accounts of the Company's subsidiaries. All intercompany transactions and balances have been eliminated in consolidation.

Any reference in these notes to applicable guidance is meant to refer to the authoritative GAAP as found in the Accounting Standards Codification ("ASC") and Accounting Standards Updates ("ASU") of the Financial Accounting Standards Board ("FASB").

***Use of estimates***

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of expenses during the reporting period. Significant estimates and assumptions made in the accompanying consolidated financial statements include, but are not limited to, the fair value of the redeemable convertible preferred shares, the fair value of the common shares, the fair value of the derivative tranches liability, the valuation of share-based awards, the valuation of deferred tax assets and income tax uncertainties, and accruals for research and development activities. The Company bases its estimates on historical experience and on various other assumptions that are believed to be reasonable. Actual results may differ from those estimates or assumptions.

***Segments***

The Company has determined that its chief executive officer is the chief operating decision maker ("CODM"). The Company operates and manages the business as one reporting and one operating segment, which is the business of identifying and advancing targeted therapies for patients of all ages with genetically defined

cancers. The Company's CODM reviews financial information on an aggregate basis for purposes of allocating resources and evaluating financial performance. All of the Company's assets are located in the United States.

***Concentration of credit risk and other risks and uncertainties***

Financial instruments that subject the Company to significant concentrations of credit risk consist primarily of cash. The Company's cash is held in one financial institution in the United States. Amounts on deposit may at times exceed federally insured limits. Management believes that the financial institution is financially sound and, accordingly, minimal credit risk exists with respect to the financial institution.

The Company is subject to certain risks and uncertainties and believes that changes in any of the following areas could have a material adverse effect on future financial position or results of its operations: ability to obtain future financing; regulatory approval and market acceptance of, and reimbursement for, product candidates; performance of third-party clinical research organizations and manufacturers upon which the Company relies; development of sales channels; protection of the Company's intellectual property; litigation or claims against the Company based on intellectual property, patent, product, regulatory or other factors; and the Company's ability to attract and retain employees necessary to support its growth.

The Company is dependent on third-party manufacturers to supply products for research and development activities in its programs. In particular, the Company relies and expects to continue to rely on a small number of manufacturers to supply it with its requirements for the active pharmaceutical ingredients and formulated drugs related to these programs. These programs could be adversely affected by a significant interruption in the supply of active pharmaceutical ingredients and formulated drugs.

***Cash and cash equivalents***

The Company considers all highly liquid investments purchased with original maturities of three months or less from the purchase date to be cash equivalents. As of December 31, 2019 and 2020, the Company did not have any cash equivalents and cash was held in checking accounts.

***Deposits***

Deposits consist of a long-term deposit of $71,000 held at a vendor in connection with the Company's facility lease agreement.

***Fair value of financial instruments***

Assets and liabilities recorded at fair value on a recurring basis in the consolidated balance sheets are categorized based upon the level of judgment associated with the inputs used to measure their fair values. Fair value is defined as the exchange price that would be received for an asset or an exit price that would be paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. The

authoritative guidance on fair value measurements establishes a three-tier fair value hierarchy for disclosure of fair value measurements as follows:

Level 1—Observable inputs such as unadjusted, quoted prices in active markets for identical assets or liabilities at the measurement date;

Level 2—Inputs (other than quoted prices included in Level 1) are either directly or indirectly observable for the asset or liability. These include quoted prices for similar assets or liabilities in active markets and quoted prices for identical or similar assets or liabilities in markets that are not active; and

Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

To the extent that the valuation is based on models or inputs that are less observable or unobservable in the market, the determination of fair value requires more judgment. Accordingly, the degree of judgment exercised by the Company in determining fair value is greatest for instruments categorized in Level 3. A financial instrument's level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement.

The carrying amounts reflected in the accompanying consolidated balance sheets for prepaid expenses and other current assets, accounts payable and accrued expenses approximate their fair values, due to their short-term nature.

***Deferred finance issuance costs***

Deferred finance issuance costs, consisting of legal, accounting, audit and filing fees relating to in-process equity financings, including the Company's initial public offering ("IPO"), are capitalized. The deferred issuance costs will be offset against offering proceeds upon the completion of the financing or the offering. In the event the financing or the offering is terminated or delayed, deferred issuance costs will be expensed immediately as a charge to general and administrative expenses in the consolidated statements of operations and comprehensive loss. As of December 31, 2019, the Company did not capitalize any issuance costs. As of December 30, 2020, the Company capitalized $36,000 in issuance costs related to its Series B redeemable convertible preferred share private financing and IPO costs.

***Property and equipment, net***

Property and equipment are recorded at cost, less accumulated depreciation and amortization. Depreciation is recognized using the straight-line method over the estimated useful lives of the related assets raging from three to five years, and leasehold improvements are amortized over the shorter of the lease term or the estimated useful life of the asset.

***Leases***

Contractual arrangements that meet the definition of a lease are classified as operating or finance leases and are recorded on the consolidated balance sheets as both a right-of-use asset ("ROU asset") and lease liability, calculated by discounting fixed lease payments over the lease term at the rate implicit in the lease or the

# Day One Biopharmaceuticals Holding Company, LLC
# Notes to the Consolidated Financial Statements

Company's incremental borrowing rate ("IBR"). Lease ROU assets and lease obligations are recognized based on the present value of the future minimum lease payments over the lease term at commencement date. The Company currently does not have any finance leases.

Operating lease ROU assets are adjusted for (i) payments made at or before the commencement date, (ii) initial direct costs incurred, and (iii) tenant incentives under the lease. As the implicit rate for the operating leases are not determinable, the Company determines its IBR based on the information available at the applicable lease commencement date. The IBR is determined by using the rate of interest that the Company would pay to borrow on a collateralized basis an amount equal to the lease payments for a similar term and in a similar economic environment where the asset is located. The Company considers a lease term to be the noncancelable period that it has the right to use the underlying asset, including any periods where it is reasonably certain the Company will exercise any option to extend the contract.

Lease costs for minimum lease payments for operating leases are recognized on a straight-line basis over the lease term. Lease liabilities are increased by interest and reduced by payments each period, and the ROU asset is amortized over the lease term. Variable lease costs are recorded when incurred. In measuring the ROU assets and lease liabilities, the Company has elected to combine lease and non-lease components. The Company excludes short-term leases, if any, having initial terms of 12 months or less at lease commencement as an accounting policy election, and recognizes rent expense on a straight-line basis over the lease term for these types of leases.

***Impairment of long-lived assets***

The Company evaluates long-lived assets, which consist of property and equipment and right-of-use assets, for impairment whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to the future undiscounted net cash flows expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the asset exceeds the fair value of the asset. To date, no impairments have been recognized in the consolidated financial statements.

***Research and development expenses***

Research and development expenses consist of costs associated with acquiring technology and intellectual property licenses that have no alternative future uses; costs incurred under agreements with third-party contract research organizations, contract manufacturing organizations and other third parties that conduct clinical trials on the Company's behalf; other costs associated with research and development programs, including laboratory materials and supplies; employee-related costs, including salaries, benefits and share-based compensation expense, for the Company's research and development personnel; and facilities and other overhead expenses, including expenses for rent and facilities maintenance, and amortization. The Company's expense research and development costs as incurred. The Company is obligated to make upfront payments upon execution of certain research and development agreements. Advance payments, including nonrefundable amounts, for goods or services that will be used or rendered for future research and development activities are deferred. Such amounts are recognized as expense as the related goods are delivered or the related services

are performed, or such time when the Company does not expect the goods to be delivered or services to be performed.

***Accrued research and development expenses***

The Company records accrued liabilities for estimated costs of research and development activities conducted by third-party service providers, which include the conduct of preclinical and clinical studies, and contract manufacturing activities. The Company records the estimated costs of research and development activities based upon the estimated amount of services provided but not yet invoiced and includes these costs in accrued liabilities in the balance sheets and within research and development expenses in the consolidated statement of operations and comprehensive loss. These costs are a significant component of our research and development expenses. The Company accrues for these costs based on factors such as estimates of the work completed and in accordance with agreements established with third-party service providers under the service agreements. The Company makes judgments and estimates in determining the accrued liabilities balance in each reporting period. As actual costs become known, the Company adjusts its accrued liabilities. The Company has not experienced any material differences between accrued costs and actual costs incurred.

The Company makes payments in connection with clinical trials under contracts with contract manufacturing organizations and contract research organizations that support conducting and managing clinical trials. The financial terms of these contracts are subject to negotiation, which vary by contract and may result in payments that do not match the periods over which materials or services are provided. Generally, these agreements set forth the scope of work to be performed at a fixed fee, unit price or on a time and materials basis. In the event the Company makes advance payments for goods or services that will be used or rendered for future research and development activities, the payments are deferred and capitalized as a prepaid expense and recognized as expense as the goods are received or the related services are rendered. Such payments are evaluated for current or long-term classification based on when they are expected to be realized.

***Patent costs***

All patent-related costs incurred in connection with filing and prosecuting patent applications are expensed as incurred due to the uncertainty of the recovery of the expenditure. Amounts incurred are classified as general and administrative expenses in the consolidated statements of operations and comprehensive loss.

***Redeemable convertible preferred shares***

The Company records redeemable convertible preferred shares at their respective fair values on the dates of issuance, net of issuance costs. The redeemable convertible preferred shares are recorded outside of members' deficit because while they are not mandatorily redeemable, in the event of a deemed liquidation event, which is outside of the Company's control, the proceeds are distributed first to the redeemable convertible preferred shareholders in accordance with their liquidation preferences. The Company has not adjusted the carrying values of the redeemable convertible preferred shares to their liquidation preferences because it is uncertain whether or when a deemed liquidation event would occur that would obligate it to pay the liquidation preferences to holders of redeemable convertible preferred shares. Subsequent adjustments to the carrying values to the liquidation preferences will be made only when it becomes probable that such a deemed liquidation event will occur.

# Day One Biopharmaceuticals Holding Company, LLC
# Notes to the Consolidated Financial Statements

***Redeemable noncontrolling interest***

Redeemable noncontrolling interest represents the portion of equity (net assets) in DOT Therapeutics-1, Inc., the Company's consolidated but not wholly owned subsidiary, that is neither directly nor indirectly attributable to the Company. Redeemable noncontrolling interest is classified as temporary equity because preferred shares issued to a holder contain certain redemption features that are not solely within the control of the Company.

***Derivative tranches liability***

The Company's obligation to issue additional redeemable convertible preferred shares upon the occurrence of certain milestone events represents a freestanding financial instrument. The instrument was classified as a liability in the consolidated balance sheets and re-measured at each reporting period end and at the settlement date. Changes in the fair value were recognized in other income (expense) in the consolidated statements of operations and comprehensive loss. The tranches were settled and reclassified to redeemable convertible preferred shares upon the Company's issuance of additional Series A redeemable convertible preferred shares in November and December 2020.

***Share-based compensation***

The Company grants incentive shares to employees and non-employees under the Incentive Share Plan, which generally vest over a four-year period with cliff vesting for the first year. The incentive shares represent a separate substantive class of equity shares. The Company also granted common shares with vesting conditions to executives and a consultant.

The Company recognizes share-based compensation expense based on the estimated fair value of all share-based awards, incentive shares and restricted common share shares, on the date of grant using the option-pricing model. The option pricing model requires the input of subjective assumptions, including the fair value of the underlying common shares, the expected term of the award, the expected volatility, risk-free interest rates, and the dividend yield. In determining the fair value of common shares, the methodologies used to estimate the enterprise value were performed using methodologies, approaches, and assumptions consistent with the American Institute of Certified Public Accountants Accounting and Valuation Guide, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*. The participation threshold amounts are determined by the board of directors (the "Board"), at the time of grant. The expected life of the awards granted during the period was determined based on an expected time to the liquidation event. The Company applied the risk-free interest rate based on the U.S. Treasury yield in effect at the time of the grant consistent with the life of the award. The expected volatility is based on a peer group in the industry in which the Company does business consistent with the expected time to liquidity. The dividend yield was set at zero as the underlying security does not and is not expected to pay a dividend.

The Company uses the straight-line attribution method for recognizing share-based compensation expense. The Company recognizes forfeitures by reducing the expense in the same period the forfeitures occur. The Company recognizes share-based compensation expense for awards with performance conditions when it is probable that the condition will be met, and the award will vest. The Company classifies share-based compensation expense in the consolidated statement of operations and comprehensive loss in the same manner in which the award recipients' payroll costs are classified or in which the award recipients' service payments are classified.

# Day One Biopharmaceuticals Holding Company, LLC
# Notes to the Consolidated Financial Statements

***Income taxes***

As the Company is a “pass-through” entity under the Internal Revenue Code, the members of the Company are taxed directly on their respective ownership interests in consolidated income and, therefore, no provision or liability for federal income tax has been included in the accompanying consolidated financial statements.

For the Company’s consolidated subsidiaries, income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax base and net operating loss and tax credit carryforwards. Deferred tax assets and liabilities are determined based upon the difference between the consolidated financial statement carrying amounts and the tax basis of assets and liabilities and are measured using the enacted tax rate expected to apply to taxable income in the years in which the differences are expected to be reversed. Deferred tax assets are reduced by a valuation allowance if it is more likely than not that some portion or all of the deferred tax asset will not be realized.

The Company’s consolidated subsidiaries recognize uncertain income tax positions at the largest amount that is more likely than not to be sustained upon audit by the relevant taxing authority. Changes in recognition or measurement are reflected in the period in which judgment occurs. The Company’s consolidated subsidiaries’ policy is to recognize interest and penalties related to the underpayment of income taxes as a component of the provision for income taxes. To date, there have been no interest or penalties recorded in relation to unrecognized tax benefits.

***Net loss per share***

The Company calculates basic and diluted net loss per share in conformity with the two-class method required for participating securities. Under the two-class method, basic net loss per share is computed by dividing the net loss by the weighted average number of common shares outstanding during the period, without consideration of potential dilutive securities. Diluted net loss per share is computed by dividing the net loss, after adjusting it for loss attributable to redeemable noncontrolling interest, by the sum of the weighted average number of common shares outstanding during the period plus the dilutive effects of potentially dilutive securities outstanding during the period. Potentially dilutive securities include incentive shares, unvested restricted common shares and redeemable convertible preferred shares. The dilutive effect of incentive shares and unvested restricted common shares is computed using the treasury stock method and the dilutive effect of redeemable convertible preferred shares is calculated using the if-converted method. For all periods presented, diluted net loss per share is the same as basic net loss per share since the effect of including potential common shares is anti-dilutive and incentive shares participation thresholds were not met.

***Comprehensive loss***

Comprehensive loss includes net loss as well as other changes in members’ deficit that result from transactions and economic events other than those with members. There were no components of other comprehensive loss for the Company for the periods presented. Thus, comprehensive loss equals net loss for all periods presented.

# Day One Biopharmaceuticals Holding Company, LLC
# Notes to the Consolidated Financial Statements

***Emerging growth company status***

The Company is an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"). Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. The Company has elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that it (i) is no longer an emerging growth company or (ii) affirmatively and irrevocably opts out of the extended transition period provided in the JOBS Act. As a result, these consolidated financial statements may not be comparable to companies that comply with the new or revised accounting pronouncements as of public company effective dates.

As described in "Recently Adopted Accounting Pronouncements" below, the Company early adopted multiple accounting standards, as the JOBS Act does not preclude an emerging growth company from adopting a new or revised accounting standard earlier than the time that such standard applies to private companies. The Company expects to use the extended transition period for any other new or revised accounting standards during the period in which it remains an emerging growth company.

***Recently adopted accounting pronouncements***

Effective January 1, 2019, the Company adopted ASU 2016-09, *Improvements to Employee Share-Based Payment Accounting*. This ASU affects entities that issue share-based payment awards to their employees. The ASU is designed to simplify several aspects of accounting for share-based payment award transactions which include–the income tax consequences, classification of awards as either equity or liabilities, classification on the statement of cash flows and forfeiture rate calculations. As the Company did not have any significant share-based compensation at the time of adoption, the adoption did not have a material impact on its consolidated financial statements.

Effective January 1, 2019, the Company adopted ASU 2018-18, *Collaborative Arrangements (Topic 808): Clarifying the Interaction between Topic 808 and Topic 606.* The ASU clarifies certain transactions between collaborative arrangement participants should be accounted for as revenue when the collaborative arrangement participant is a customer in the context of a unit of account and precludes recognizing as revenue consideration received from a collaborative arrangement participant if the participant is not a customer. As the Company did not have any collaborative arrangements at the time of adoption, the adoption did not have an impact on its consolidated financial statements.

Effective January 1, 2019, the Company adopted ASU 2016-02, *Leases (Topic 842),* as amended, with guidance regarding the accounting for and disclosure of leases. The update requires lessees to recognize the liabilities related to all leases, including operating leases, with a term greater than 12 months on the balance sheet. This update also requires lessees and lessors to disclose key information about their leasing transactions. As the Company did not have any leasing arrangements prior to, or at the time of adoption, the adoption did not have an impact on its consolidated financial statements.

At inception, in November 2018, the Company adopted ASU 2018-07, *Compensation- Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting.* Prior to the adoption of ASU 2018-07, the measurement date for non-employee awards was generally the date the services are completed, resulting in

financial reporting period adjustments to share-based compensation during the vesting terms for changes in the fair value of the awards. After the adoption of ASU 2018-07, the measurement date for non-employee awards is the date of grant without changes in the fair value of the award. The adoption did not have any impact on the Company's consolidated financial statements.

Effective January 1, 2019, the Company adopted ASU No. 2018-13, *Fair Value Measurement (Topic 820), Disclosure Framework–Changes to the Disclosure Requirements for Fair Value Measurement*. This ASU removed the following disclosure requirements: (1) the amount of and reasons for transfers between Level I and Level 2 of the fair value hierarchy; (2) the policy for timing of transfers between levels; and (3) the valuation processes for Level 3 fair value measurements. Additionally, this update added the following disclosure requirements: (1) the changes in unrealized gains and losses for the period included in other comprehensive income and loss for recurring Level 3 fair value measurements held at the end of the reporting period; (2) the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements. For certain unobservable inputs, an entity may disclose other quantitative information (such as the median or arithmetic average) in lieu of the weighted average if the entity determines that other quantitative information would be a more reasonable and rational method to reflect the distribution of unobservable inputs used to develop Level 3 fair value measurements. ASU No. 2018-13 is effective for fiscal years beginning after December 1 5, 2019 with early adoption permitted. The impact of adopting ASU 2018-13 was immaterial on the consolidated financial statements and disclosures.

***Recently issued accounting pronouncements***

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments-Credit Losses: Measurement of Credit Losses on Financial Instruments (Topic 326).* ASU 2016-13 requires measurement and recognition of expected credit losses for financial assets. In April 2019, the FASB issued clarification to ASU 2016-13 within ASU 2019-04, Codification Improvements to Topic 326, Financial Instruments-Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments. The guidance will become effective for the Company for fiscal years beginning after December 15, 2022. The Company is currently evaluating the impact that ASU 2016-13 will have on the consolidated financial statements and related disclosures.

In August 2020, the FASB issued ASU No. 2020-06 ("ASU 2020-06") *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity.* ASU 2020-06 will simplify the accounting for convertible instruments by reducing the number of accounting models for convertible debt instruments and convertible preferred shares. Limiting the accounting models will result in fewer embedded conversion features being separately recognized from the host contract as compared with current GAAP. Convertible instruments that continue to be subject to separation models are (1) those with embedded conversion features that are not clearly and closely related to the host contract, that meet the definition of a derivative, and that do not qualify for a scope exception from derivative accounting and (2) convertible debt instruments issued with substantial premiums for which the premiums are recorded as paid-in capital. ASU 2020-06 also amends the guidance for the derivatives scope exception for contracts in an entity's own equity to reduce form-over-substance-based accounting conclusions. The guidance will become effective for the Company for fiscal years beginning after December 15, 2023. Early adoption is permitted, but no earlier than December 15, 2020 including interim periods within that year. The Company is currently evaluating the impact that ASU 2016-13 will have on the consolidated financial statements and related disclosures.

# Day One Biopharmaceuticals Holding Company, LLC
# Notes to the Consolidated Financial Statements

## 3. Fair value measurements

The following tables present financial assets and liabilities measured at fair value on a recurring basis and indicate the level of the fair value hierarchy utilized to determine such fair values (in thousands):

| | December 31, 2019 | | | |
|---|---|---|---|---|
| | Total | Level 1 | Level 2 | Level 3 |
| Derivative tranches liability | $1,483 | $ — | $ — | $ 1,483 |

As of December 31, 2020, the Company did not have any outstanding any derivative tranches liability (Note 10).

The derivative tranches liability is a freestanding financial instrument and represents the Company's obligation to issue additional Series A redeemable convertible preferred shares at a fixed price upon achievement of specified milestones or upon the Board approval. The derivative tranches liability's fair value was estimated as a forward contract using a probability weighted model. The fair value of the liability is discounted back to the initial issuance date and adjusted for probability of the tranches milestone achievement. Significant estimates and assumptions impacting fair value include the discount rate, estimated time to closing of future tranches, and probability of tranche closing. The discount rate was equal to the risk-free rate for the estimated timing of each tranche closing.

The following table provides key assumptions used in the valuation of derivative tranches liability:

| | Year ended December 31, 2019 | Year ended December 31, 2020 |
|---|---|---|
| Probability of milestones achievement | 81%—90% | 90%—100% |
| Expected term (in years) | 0.5—1.0 | 0.75— 0.0 |
| Discount rate | 1.59%—1.60% | 0.08%—0.18% |
| Dividend yield | 0% | 0% |

The following table provides roll-forward of the aggregate fair value of the Company's derivative tranches liability (in thousands):

| | |
|---|---|
| Balance at December 31, 2018 | $ — |
| Issuance of derivative tranches liability | 1,483 |
| Balance at December 31, 2019 | 1,483 |
| Change in fair value of derivative tranches liability | 30,000 |
| Reclassification of derivative tranches liability upon settlement | (31,483) |
| Balance at December 31, 2020 | $ — |

There were no transfers between Level 1, Level 2 or Level 3 categories in the years ended December 31, 2019 or 2020.

# Day One Biopharmaceuticals Holding Company, LLC
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## 4. Prepaid expenses and other current assets

Prepaid and other current assets consisted of the following (in thousands):

| | December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Prepaid research and development expenses | — | $ 1,259 |
| Other prepaid expenses and other assets | 7 | 84 |
| Total prepaid expenses and other current assets | $ 7 | $ 1,343 |

## 5. Property and equipment, net

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

| | December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Furniture and fixtures | $ — | $ 78 |
| Leasehold improvements | — | 15 |
| Less: accumulated depreciation and amortization | — | (16) |
| Property and equipment, net | $ — | $ 77 |

Depreciation and amortization expense was zero and $16,000 for the years ended December 31, 2019 and 2020, respectively.

## 6. Accrued expenses and other current liabilities

Accrued expenses and other current liabilities consisted of the following (in thousands):

| | December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Accrued payroll related expenses | $ 169 | $ 717 |
| Accrued research and development expenses | 24 | 554 |
| Accrued professional service expenses | 273 | 298 |
| Other | 3 | 27 |
| Total accrued expenses and other current liabilities | $ 469 | $ 1,596 |

## 7. Significant agreements

***Takeda assets purchase agreement***

On December 16, 2019, DOT Therapeutics-1, Inc., the majority owned subsidiary, entered into an asset purchase agreement (the “Takeda Asset Agreement”), with Millennium Pharmaceuticals, Inc., an affiliate of Takeda Pharmaceutical Company Limited (“Takeda”). Pursuant to the Takeda Asset Agreement, DOT-1 purchased certain technology rights and know-how related to TAK-580 (which is now DAY101) that provides new approach

# Day One Biopharmaceuticals Holding Company, LLC
# Notes to the Consolidated Financial Statements

for treating patients with primary brain tumors or brain metastases of solid tumors. DOT-1 also received clinical inventories supplies to use in the Company's research and development activities of such RAF-inhibitor and an assigned investigator clinical trial agreement. Takeda also assigned to DOT-1 its exclusive license agreement (the "Viracta License Agreement") with Sunesis Pharmaceuticals, Inc. (which recently merged with Viracta) ("Viracta"). Takeda also granted DOT-1 a worldwide, sublicensable exclusive license under specified patents and know-how and non-exclusive license under other patents and know-how generated by Takeda under the Takeda Asset Agreement. The Company also granted Takeda a grant back license, as defined in the agreement, which is terminable either automatically or by DOT-1 in the event Takeda does not achieve specified development milestones within the applicable timeframes set forth under the Takeda Asset Agreement.

In consideration for the sale and assignment of assets and the grant of the license under the Takeda Asset Agreement, DOT-1 made an upfront payment of $1.0 million in cash and issued 9,857,143 shares of Series A redeemable convertible preferred stock in DOT-1. The fair value of issued shares was estimated as $9.9 million, based on the price paid by other investors for issued shares in the Series A financing of DOT-1 Therapeutics, Inc. To the extent activities by Takeda with respect to its exploitation of a product containing DAY101 in its field triggers a milestone under the Viracta License Agreement, Takeda will, at DOT-1 election, pay such milestone directly to Viracta.

The term of the Takeda Asset Agreement will expire on a country-by-country basis upon expiration of all assigned patent rights and all licensed patent rights in such country.

***Viracta license agreement***

On December 16, 2019, DOT-1 amended and restated the Viracta License Agreement that was assigned pursuant to the Takeda Asset Agreement. Under the Sunesis License Agreement, DOT-1 received a worldwide exclusive license under specified patent rights and know-how to develop, use, manufacture, and commercialize products containing compounds binding the RAF protein family.

DOT-1 paid $2.0 million upfront in cash to Viracta, which was recorded as research and development expenses. Additionally, if DOT-1 obtains a priority review voucher with respect to a licensed product and sell such priority review voucher to a third party or use such priority review voucher, DOT-1 is obligated to pay Viracta a specified percentage in the mid-teen digits of all net consideration received from any such sale or of the value of such used priority review voucher, as applicable. Commencing on the first commercial sale of a licensed product in a country, DOT-1 is obligated to pay tiered royalties ranging in the mid-single-digit percentages on net sales of licensed products, if any. The obligation to pay royalties will end on a country-by-country and licensed product-by-licensed product basis commencing on the first commercial sale in a country and continuing until the later of: (i) the expiration of the last valid claim of the Viracta licensed patents, jointly owned collaboration patents or specified patents owned by us covering the use or sale of such product in such country, (ii) the expiration of the last statutory exclusivity pertaining to such product in such country or (iii) the tenth anniversary of the first commercial sale of such product in such country. No milestones were achieved and recorded as of December 31, 2019 and 2020.

The term of the Viracta License Agreement will expire on a licensed product-by-licensed product and country-by-country basis upon the expiration of the Company's obligation to pay royalties to Viracta with

respect to such product in such country. DOT-1 has the right to terminate the Viracta License Agreement with respect to any or all of the licensed products at will upon a specified notice period.

## 8. Commitments and contingencies

***Leases***

The Company entered into a lease agreement for its corporate office facility in South San Francisco, California in March 2020, which expires in three years. The Company can extend the lease term for additional three years at market rates upon the notice of extension. The Company is obligated to pay monthly rent expense and its pro rata share of utilities, common area maintenance expenses and property taxes. The landlord also provided an allowance of $10,000 for any tenant improvements. The Company concluded that it is an operating lease. Common area expenses are a non-lease component and a variable consideration and included in operating expenses as incurred. The extension period has not been included in the determination of the ROU asset or the lease liability for operating leases as the Company concluded that it is not reasonably certain that it would exercise this option.

The Company determined the lease IBR based on the information available at the applicable lease commencement date as the Company's lease did provide an implicit rate. The IBR is determined by using the rate of interest that the Company would pay to borrow on a collateralized basis an amount equal to the lease payments for a similar term and in a similar economic environment where the asset is located. The Company determined the amounts of its lease liabilities using an IBR of 8%. As of December 31, 2020, the remaining lease term was 2.17 years.

The Company's lease does not require any contingent rental payments, impose financial restrictions, or contain any residual value guarantees.

Amortization of right-of-use assets is recognized on a straight-line basis over the applicable lease term. Amortization was $139,000 for the year ended December 31, 2020. Cash paid for amounts included in the measurement of operating lease liabilities was $0.2 million in 2020. Variable payments expensed during 2020 fiscal year were immaterial.

As of December 31, 2020, the future lease obligations were as follows (in thousands):

| **For the Years Ending December 31,** | |
|---|---|
| 2021 | $205 |
| 2022 | 212 |
| 2023 | 18 |
| Total future minimum lease payments | 435 |
| Less: Imputed interest | (33) |
| Present value of operating lease liabilities | $402 |

Prior to March 2020, the Company did not have any leases.

# Day One Biopharmaceuticals Holding Company, LLC
# Notes to the Consolidated Financial Statements

***Research and development agreements***

The Company enters into contracts in the normal course of business with clinical research organizations for clinical trials, with contract manufacturing organizations for clinical supplies manufacturing and with other vendors for preclinical studies, supplies and other services and products for operating purposes. These contracts generally provide for termination on notice, with the exception of one vendor with a potential termination fee if a purchase order is cancelled within a specified time and of another vendor where labor costs are non-cancellable after the approval of the project plan. As of December 31, 2019, and 2020, there were no amounts accrued related to termination and cancellation charges as these are not probable.

***License agreements***

The Company entered into Sunesis license agreement (Note 7), pursuant to which the Company is required to pay milestones contingent upon meeting of specific events. No such milestones were achieved or probable as of December 31, 2019 and 2020. The Company is required to pay royalties on sales of products developed under this agreement. All products are in development as of December 31, 2019 and 2020 and no such royalties were due.

***Legal proceedings***

The Company, from time to time, may be party to litigation arising in the ordinary course of business. The Company was not subject to any material legal proceedings during the years ended December 31, 2019 and 2020, and, to the best of its knowledge, no material legal proceedings are currently pending or threatened.

***Indemnification agreements***

In the normal course of business, the Company enters into contracts and agreements that contain a variety of representations and warranties and provide for indemnification for certain liabilities. The exposure under these agreements is unknown because it involves claims that may be made against it in the future but have not yet been made. To date, the Company has not paid any claims or been required to defend any action related to its indemnification obligations. However, the Company may record charges in the future as a result of these indemnification obligations. The Company also has indemnification obligations to its directors and executive officers for specified events or occurrences, subject to some limits, while they are serving at its request in such capacities. There have been no claims to date and the Company believes the fair value of these indemnification agreements is minimal. Accordingly, the Company had not recorded any liabilities for these agreements as of December 31, 2019 and 2020.

## 9. Convertible notes

The Company issued convertible notes (the “Notes”) to its investor in December 2018 and July 2019 for $1.0 million each. The Notes and accrued interest were converted into 926,557 shares of the Series A redeemable convertible preferred shares in December 2019. The Notes had embedded conversion options and redemption options. The Company concluded that none of these embedded and standalone features met the requirements to be bifurcated derivatives. The Notes also included contingent beneficial conversion features. The Company computed the number of shares upon conversion based on the adjusted conversion price and

compared it with the number that would have been received before the occurrence of the contingent event. The excess number of shares multiplied by the commitment date share price equals the incremental intrinsic value that resulted from the resolution of the contingency and the corresponding adjustment to the conversion price. As the intrinsic value of the beneficial conversion feature was greater than the proceeds allocated to the convertible notes, the amount of the discount assigned to the beneficial conversion feature was limited to the amount of proceeds allocated to the convertible notes. The Company recognized beneficial conversion feature of $2.0 million as debt discount upon the resolution of the contingency, the issuance of Series A redeemable convertible preferred shares. Debt discount was amortized to interest expense upon notes conversion.

## 10. Redeemable convertible preferred shares

In December 2019, the Company issued 4,450,971 Series A redeemable convertible preferred shares at a price of $6.7401 per share for gross cash proceeds of $30.0 million and issued 926,557 shares upon the conversion of the outstanding convertible note and accrued interest of $2.1 million. The Company incurred issuance costs of $95,000.

In connection with the initial issuance of the Series A redeemable convertible preferred shares, the Company had an obligation to sell an additional 4,450,970 Series A shares at $6.7401 per share upon achievement of certain milestones in two tranches. The Company determined that the obligation to sell additional shares is a freestanding financing instrument and a liability. The Company estimated the fair value of the liability to be $1.5 million and recorded it as a reduction to redeemable convertible preferred shares and as a derivative tranche liability in its consolidated balance sheet at the issuance date.

In November and December 2020, the Board approved the settlement of tranches and the Company issued 4,450,970 shares for gross cash proceeds of $30.0 million. The Company incurred issuance costs of $22,000.

Derivative tranches liability was remeasured at fair value of $31.5 million and reclassified to redeemable convertible preferred shares upon the settlement. Changes in the derivative tranche liability fair value from the issuance date to the settlement date of $30.0 million were recorded to other expenses in the Company's consolidated statement of operations and comprehensive loss.

The authorized, issued, and outstanding Series A redeemable convertible preferred shares as of December 31, 2019 and 2020 were as follows:

| | December 31, 2019 | | | |
|---|---|---|---|---|
| | Shares authorized | Shares issued and outstanding | Liquidation value | Carrying value |
| Series A redeemable convertible preferred shares | 9,828,498 | 5,377,528 | $ 36,245 | $ 30,504 |

| | December 31, 2020 | | | |
|---|---|---|---|---|
| | Shares authorized | Shares issued and outstanding | Liquidation value | Carrying value |
| Series A redeemable convertible preferred shares | 9,828,498 | 9,828,498 | $ 66,245 | $ 91,964 |

# Day One Biopharmaceuticals Holding Company, LLC
# Notes to the Consolidated Financial Statements

Series A redeemable convertible preferred shares have the following rights, preferences and privileges in accordance with the Company's Operating Agreement, as amended in March 2020 (the "Operating Agreement"):

***Voting rights***

The holders of the preferred shares vote together with the holders of the common shares as a single class and on an as converted to common share basis.

***Conversion***

Series A redeemable convertible preferred shares are convertible at the option of a holder into common shares at a conversion rate equal to the original purchase price of $6.7401 (subject to anti-dilution and other adjustments in accordance with the Operating Agreement). The Series A shares automatically convert to common shares at then applicable conversion rate upon written consent of holders of at least 60% of the then outstanding preferred shares and upon the closing of the sale of common shares to the public at a price of at least $20.22 per share (subject to appropriate adjustments) in a firm-commitment underwritten public offering resulting in at least $50.0 million of gross proceeds to the Company, provided that common shares are listed for trading on the Nasdaq Stock Market or the New York Stock Exchange.

***Anti-dilution and other protective rights***

The holders of the Series A redeemable convertible preferred shares have proportional anti-dilution protection for shares splits, shares dividends and similar recapitalizations. Subject to certain exclusions, anti-dilution price protection for additional sales of securities by the Company for consideration per share less than the applicable conversion rate per share of any series of redeemable convertible preferred shares, shall be on a weighted average basis, as defined in the Operating Agreement.

The Company cannot without the written consent or affirmative vote of the holders of 60% of outstanding Series A redeemable convertible preferred shares (i) to create, or authorize, or issue any class or series of capital shares unless the same ranks junior to the Series A with respect to the distribution of assets on the liquidation, dissolution or winding up of the LLC, the payment of dividends and rights of redemption; (ii) reclassify, alter or amend any existing security of the LLC that is junior or pari passu with the Series A shares in distribution of assets on the liquidation, dissolution or winding up of the LLC, payment of dividends or rights of redemption; (iii) with certain exceptions, set aside or make any distribution in respect of, or redeem, or pay or declare any dividend, purchase or otherwise acquire any of, the shares or other equity securities; (iv) cause any subsidiary to pay or declare any dividend or make any distribution on any shares of capital stock of such subsidiary (unless approved by the Board, which must include a majority of the Series A Managers); (v) effect any merger, consolidation, reclassification, liquidation, dissolution, winding-up, recapitalization, or reorganization or sale or exclusive license of all or substantially all of its assets; (vi) amend, alter, repeal or waive any provision of the Operating Agreement or the Certificate of Formation; (vii) increase the number of authorized preferred shares, common shares or incentive shares; (viii) acquire any new preclinical or clinical development program/compound or an equity interest in any entity that is not a wholly owned subsidiary of the LLC (unless approved by the Board, which must include a majority of the Series A Managers); (ix) issue any security of any subsidiary other than to the LLC (unless approved by the Board, which must include a majority

of the Series A Managers); or (x) incur any indebtedness or issue any guaranty of any third-party obligation in an amount greater than $1.0 million (unless approved by the Board, which must include a majority of the Series A Managers), other than ordinary course trade payables, borrowing between the LLC and its subsidiaries or between the LLC's subsidiaries.

***Liquidation preference***

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, the holders of Series A redeemable convertible preferred shares are entitled to be paid before any holders of common shares (Note 11) and incentive shares (Note 12), a per share amount equal to the difference between the original issue price and the amount previously distributed to Series A holders in accordance with the distribution provisions in the Operating Agreement, if any. After the preferential payments have been made in full to the holders of Series A redeemable convertible preferred shares, the remaining assets of the Company available for distribution will be distributed among the holders of Series A redeemable convertible preferred shares, common shares and incentive shares, pro rata based on the number of incentive shares and common shares held by each such holder, treating for this purpose all shares of Series A redeemable convertible preferred shares as if they had been converted to common shares immediately prior to such liquidation, dissolution or winding up. No such distributions will be made to the holders of incentive shares in respect to unvested incentive shares and until the cumulative amount to be distributed to all shares subsequent to the issuance of incentive share exceeds the amount of such incentive share's participation threshold.

***Distributions preference***

Distributions, when determined by the Board, are payable first, to the holders of the Series A redeemable convertible preferred shares, pro rata in proportion to the liquidation preference amounts in respect of the Series A redeemable convertible preferred shares held by such holders; thereafter, to the Members in proportion to the number of shares held by such members, on as converted basis; provided, however, that no distributions shall be made to unvested incentive shares and until the cumulative amount to be distributed to all shares subsequent to the issuance of incentive share exceeds the amount of such incentive share's participation threshold.

***Redemption***

The Series A redeemable convertible preferred shares are not redeemable except in the event of certain effected deemed liquidation events. As of December 31, 2019 and 2020, the Company classified Series A redeemable convertible preferred shares as temporary equity in accordance with authoritative guidance for the classification and measurement of potentially redeemable securities whose redemption is based upon certain change in control events outside of the Company's control, including liquidation, sale or transfer of control of the Company. The Company did not adjust the carrying value of the Series A redeemable convertible preferred shares to the deemed redemption values of such shares since a liquidation event was not probable.

## 11. Common shares

As of December 31, 2020, the Company was authorized to issue 12,424,571 common shares. Common shares' holders are entitled to vote and elect one Board member. As of December 31, 2020, the Company had 2,596,073

issued and outstanding common shares. As of December 31, 2020, the Company reserved 9,828,498 shares upon conversion of redeemable convertible preferred shares into common shares.

In November 2018, the Company entered into common shares purchase agreements with two founders of the Company. The individuals purchased a total of 1,200,000 common shares for a total purchase price of $300. Shares vest monthly for two and four years, respectively. Vesting for a certain number of shares was accelerated upon the Company's closing of its Series A redeemable convertible preferred share financing. The Company also has an option for a period of ninety days after the individual's employment is terminated either voluntarily or involuntarily to repurchase the unvested common shares at a price that is the lower of the original price per share paid by the founder for such stock or the fair value as of the date of such repurchase. As of December 31, 2019, and 2020, there were 333,336 and 83,340 shares unvested, respectively.

## 12. Incentive shares and share-based compensation

The Company grants incentive shares under the Incentive Share Plan and is authorized to issue 1,854,856 incentive shares as of December 31, 2020. Incentive shares are a separate non-voting class of shares that participate in distributions only after incentive shares vest and a participation threshold is met. The incentive shares represent profits interests in the Company, which is an interest in the increase in the Company's value over the participation threshold, as defined in the Operating Agreement and as determined at the time of grant. A holder of incentive share has the right to participate in distributions of profits only in excess of the participation threshold. The participation threshold is based on the valuation of the Company's common shares on or around the grant date.

The Company grants incentive shares to employees and non-employees, which generally vest over a four-year period with cliff vesting for the first year. The Board approves vesting terms and conditions of each award and can accelerate vesting of incentive shares on an award-by-award basis. Vesting of incentive shares is accelerated for all unvested shares upon a termination of services without cause within 12 months after the consummation of a change of control transaction.

The fair value of the incentive shares is estimated using an option pricing model with the following assumptions:

| | Year ended December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Common share fair value | $ 1.88 | $ 1.98—$4.89 |
| Participation threshold | $ 0.00 | $ 0.62 |
| Risk free rate | 1.64% | 0.16%—0.30% |
| Volatility | 78.0% | 78%—80% |
| Time to liquidity (in years) | 3.71—4.36 | 3.03—3.33 |
| Grant date fair value | $0.50—$1.53 | $ 1.65—$3.89 |

The Company used the option pricing model to estimate the fair value of each incentive shares award on the date of grant. The members' equity value was based on a recent enterprise valuation analysis performed and common share fair value. The participation threshold amounts are determined by the Board at the time of grant. The expected life of the awards granted during the period was determined based on an expected time to

the liquidation event. The Company applied the risk-free interest rate based on the U.S. Treasury yield in effect at the time of the grant consistent with the life of the award. The expected volatility is based on a peer group in the industry in which the Company does business consistent with the expected time to liquidity. The dividend yield was set at zero as the underlying security does not and is not expected to pay a dividend.

***Fair value of common share***

Management's approach to estimate the fair value of the common share is consistent with the methods outlined in the American Institute of Certified Public Accountants' Practice Aid, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation (*the "Practice Aid"), considering a number of objective and subjective factors including: valuations of common shares performed with the assistance of independent third-party valuation specialists; the Company's stage of development and business strategy, including the status of research and development efforts, and the material risks related to the business and industry; the Company's results of operations and financial position, including levels of available capital resources; the valuation of publicly traded companies in the life sciences and biotechnology sectors, as well as recently completed mergers and acquisitions of peer companies; the lack of marketability of the common shares; the prices of redeemable convertible preferred shares sold to investors in arm's length transactions and the rights, preferences, and privileges of the Company's redeemable convertible preferred shares relative to those of common shares; the likelihood of achieving a liquidity event for the holders of the common and redeemable convertible preferred shares, such as an initial public offering or a sale, given prevailing market conditions. The fair value of the common shares is approved by the Board until such time as the Company shares are listed on an established stock exchange or national market system.

The incentive shares have been classified as equity awards and share-based compensation expense is based on the grant date fair value of the award.

The following table provides a summary of the stock option activity:

| | Number of shares | Weighted average grant date fair value |
|---|---|---|
| Outstanding at December 31, 2018 | 13,775 | $ 0.005 |
| Granted | 626,409 | $ 1.32 |
| Outstanding at December 31, 2019 | 640,184 | $ 1.29 |
| Granted | 1,333,842 | $ 3.47 |
| Forfeited | (205,412) | $ 0.0001 |
| Outstanding at December 31, 2020 | 1,768,614 | $ 2.93 |

# Day One Biopharmaceuticals Holding Company, LLC
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Share-based compensation expense recorded in the accompanying consolidated statements of operations and comprehensive loss is as follows (in thousands):

| | Year ended December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Research and development expense | $ 73 | $ 212 |
| General and administrative expense | 38 | 314 |
| Total share-based compensation expense | $ 111 | $ 526 |

As of December 31, 2020, there was $4.6 million of total unrecognized compensation expense related to 1,564,053 unvested incentive shares. The expense is expected to be recognized over a weighted-average period of 2.6 years.

## 13. Income taxes

Day One Biopharmaceuticals Holdings Company, LLC is treated as a partnership for tax purposes, and thus, not subject to income taxes. It is the responsibility of the LLC members to report their proportion share of any taxable income or loss generated by Day One Biopharmaceuticals Holdings Company, LLC to the appropriate taxing authorities and pay the associated taxes, if any. With respect to the Company's consolidated subsidiaries, these entities are treated as corporations for tax purposes and are subject to income taxes which have been included in the consolidated financial statements. All pre-tax losses have been incurred in the United States.

The effective tax rate of the Company's provision (benefit) for income taxes differs from the federal statutory rate as follows:

| | 2019 | 2020 |
|---|---|---|
| Statutory rate | 21.0% | 21.0% |
| State tax | 6.1% | 2.3% |
| Permanent differences | (2.7)% | (14.6)% |
| Credits | — | 1.4% |
| Change in valuation allowance | (24.4)% | (10.1)% |
| Total | 0.0% | 0.0% |

# Day One Biopharmaceuticals Holding Company, LLC
# Notes to the Consolidated Financial Statements

Deferred income taxes reflect the net effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The principal components of the Company's deferred tax assets and liabilities consisted of the following (in thousands):

| | Year ended December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Deferred tax assets | | |
| Federal and state net operating loss carryforwards | $ 4,181 | $ 7,732 |
| Credits | — | 731 |
| Accrued expenses | — | 235 |
| Total deferred tax assets | $ 4,181 | $ 8,698 |
| Total deferred tax liabilities | — | (97) |
| Less: valuation allowance | (4,181) | (8,601) |
| Net deferred tax assets | $ — | $ — |

The Company has incurred net operating losses in each year since inception. The Company has not reflected the benefit of any such net operating loss carryforwards in the consolidated financial statements. Due to its history of losses, and lack of other positive evidence, the Company determined that it is more likely than not that its net deferred tax assets will not be realized, and therefore, the net deferred tax assets are fully offset by a valuation allowance at December 31, 2019 and 2020. The Company increased the valuation allowance by $4.2 million and $4.4 million for the years ended December 31, 2019 and 2020, respectively.

As of December 31, 2020, the Company had federal net operating loss carryforwards ("NOLs"), of $27.6 million that do not expire and federal tax credits of $0.8 million available to offset tax liabilities that begin to expire in 2038. The Company also has gross state NOLs of $27.7 million and state tax credits of $0.1 million which are available to offset state tax liabilities. The state NOLs begin to expire in 2038 and the state tax credits do not expire.

The Company has not completed a study to determine whether an ownership change per the provisions of Section 382 of the Internal Revenue Code, as well as similar state provisions, has occurred. Utilization of its net operating loss and income tax credit carryforwards may be subject to a substantial annual limitation due to ownership changes that may have occurred or that could occur in the future. These ownership changes may limit the amount of the net operating loss and income tax credit carryover that can be utilized annually to offset future taxable income. In general, an "ownership change" as defined by Section 382 of the Internal Revenue Code results from a transaction or series of transactions over a three-year period resulting in an ownership change of more than 50 percentage points of the outstanding shares of a company by certain shareholders.

In March 2020, the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act") was enacted and signed into law and GAAP requires recognition of the tax effects of new legislation during the reporting period that includes the enactment date. The CARES Act, includes changes to the tax provisions that benefits business entities, and makes certain technical corrections to the 2017 Tax Cuts and Jobs Act. The tax relief measures for businesses include a five-year net operating loss carryback, suspension of annual deduction limitation of 80% of taxable income from net operating losses generated in a tax year beginning after December 31, 2017, changes in the deductibility of interest, acceleration of alternative minimum tax credit refunds, payroll tax

relief, and a technical correction to allow accelerated deductions for qualified improvement property. The Act also provides other non-tax benefits to assist those impacted by the pandemic. The Company evaluated the impact of the CARES Act and determined that there was no material impact.

***Uncertain tax positions***

In accordance with authoritative guidance, the impact of an uncertain income tax position on the income tax return must be recognized at the largest amount that is more-likely-than-not to be sustained upon audit by the relevant taxing authority. An uncertain income tax position will not be recognized if it has less than a 50% likelihood of being sustained.

The following table reconciles the beginning and ending amount of unrecognized tax benefits for the year ended December 31, 2020 (in thousands):

| | 2020 |
|---|---|
| Gross unrecognized tax benefits at the beginning of the year | $ 2 |
| Additions from tax positions taken in the current year | 186 |
| Gross unrecognized tax benefits at end of the year | $188 |

Of the total unrecognized tax benefits at December 31, 2020, no amount will impact the Company's effective tax rate due to the Company's full valuation allowance. The Company does not anticipate that there will be a substantial change in unrecognized tax benefits within the next 12 months.

The Company recognizes interest and penalties related to unrecognized tax positions within the income tax expense line in the accompanying consolidated statements of operations and comprehensive loss. There were no accrued interest and penalties associated with uncertain tax positions as of December 31, 2019 or December 31, 2020.

The Company files income tax returns in the U.S. federal and California tax jurisdictions. The federal and state income tax returns from inception to December 31, 2020 remain subject to examination.

## 14. Defined contribution plan

The Company maintains an employee savings plan pursuant to Section 401(k) of the Internal Revenue Code. All employees are eligible to participate provided that they meet the requirements of the plan. The Company has elected to not make matching contributions under the plan.

# Day One Biopharmaceuticals Holding Company, LLC
# Notes to the Consolidated Financial Statements

## 15. Net loss per share

***Net loss per share***

Basic and diluted net loss per share attributable to common shareholders is calculated as follows (in thousands except share and per share amounts):

| | Year ended December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Net loss and comprehensive loss | $ (16,984) | $ (43,843) |
| Net loss attributable to redeemable convertible noncontrolling interest | (4,350) | (3,336) |
| Net loss attributable to Day One Biopharmaceuticals Holding Company, LLC members | (12,634) | (40,507) |
| Net loss per share attributable to Day One Biopharmaceuticals Holding Company, LLC members, basic and diluted | $ (4.96) | $ (17.03) |
| Weighted-average number of shares used in computing net loss per share, basic and diluted | 2,548,230 | 2,378,286 |

The following outstanding potentially dilutive securities have been excluded from the calculation of diluted net loss per share, as their effect is anti-dilutive:

| | Year ended December 31, | |
|---|---|---|
| | 2019 | 2020 |
| Redeemable convertible preferred shares | 5,377,528 | 9,828,498 |
| Incentive shares | 640,184 | 1,768,614 |
| Unvested common shares | 333,336 | 83,340 |
| Total | 6,351,048 | 11,680,452 |

## 16. Redeemable noncontrolling interest

DOT Therapeutics-1, Inc., the Company's subsidiary, issued Series A redeemable convertible preferred shares to Takeda for the Takeda Assets Agreement (Note 7). The Company concluded that it represents a redeemable noncontrolling interest.

The Company adjusts the carrying value of redeemable noncontrolling interest to allocate net losses of the subsidiary to Takeda. Transfers to and from the redeemable noncontrolling interest represent changes in ownership and the allocation of Series A redeemable convertible preferred shares issuance costs issued by the subsidiary. Changes from net income attributable to the company and transfers from redeemable noncontrolling interests were $3.6 million during 2020.

## 17. Subsequent events

The Company has reviewed and evaluated subsequent events as of December 31, 2020 through March 19, 2021, the date that the consolidated financial statements were available to be issued.

# Day One Biopharmaceuticals Holding Company, LLC
# Notes to the Consolidated Financial Statements

In February 2021, the Board restated the Operating Agreement to increase the number of common shares authorized to 17,000,000 shares, increase the number of authorized incentive shares to 3,838,356 shares, to sets the authorized number of the Company's preferred shares to 13,973,939 shares, and to designate 4,145,441 shares of the authorized preferred shares as a new class of Series B redeemable convertible preferred shares. The Company also increased the authorized number of managers on the Board from six managers to seven.

In February 2021, the Company issued 4,145,441 Series B redeemable convertible preferred shares at $31.3597 per share in the new private financing for gross cash proceeds of $130.0 million.

In February 2021, Day One Biopharmaceuticals, Inc., the Company's subsidiary, entered into the license agreement (the "MRKDG License Agreement"), with Merck KGaA, a pharmaceutical corporation located in Darmstadt, Germany ("Merck KGaA, Darmstadt, Germany"). Under the MRKDG License Agreement, Merck KGaA, Darmstadt, Germany granted to Day One Biopharmaceuticals, Inc., an exclusive license, with the right to grant sublicenses through multiple tiers for us to research, develop, manufacture and commercialize products containing and comprising the pimasertib and MSC2015103B compounds. The Company paid an upfront payment of $8.0 million to Merck KGaA, Darmstadt, Germany and may pay additional payments of up to $367.0 million based upon the achievement of specified development, regulatory, and commercial milestones, as well a high, single-digit royalty percentage on future sales resulting from the development of these licensed compounds, if any.

# Day One Biopharmaceuticals Holding Company, LLC

# Condensed Consolidated Balance Sheets

## (unaudited)

| (in thousands, except share amounts) | December 31, 2020 | March 31, 2021 |
|---|---|---|
| **Assets** | | |
| **Current assets:** | | |
| Cash and cash equivalents | $ 43,728 | $ 154,870 |
| Prepaid expenses and other current assets | 1,343 | 3,885 |
| **Total current assets** | 45,071 | 158,755 |
| Property and equipment, net | 77 | 72 |
| Operating lease right-of-use asset | 406 | 363 |
| Deposits and other long-term assets | 107 | 1,690 |
| **Total assets** | 45,661 | 160,880 |
| **Liabilities, redeemable convertible preferred shares, redeemable convertible noncontrolling interest and members' deficit** | | |
| **Current liabilities:** | | |
| Accounts payable | $ 202 | $ 686 |
| Accrued expenses and other current liabilities | 1,596 | 2,181 |
| Current portion of operating lease liabilities | 198 | 199 |
| **Total current liabilities** | 1,996 | 3,066 |
| Operating lease liabilities, long-term | 204 | 159 |
| **Total liabilities** | 2,200 | 3,225 |
| Commitments and contingencies (Note 8) | | |
| Redeemable convertible preferred shares, 9,828,498 shares authorized, issued and outstanding at December 31, 2020; 13,973,939 shares authorized, issued and outstanding at March 31, 2021 | 91,964 | 221,721 |
| Redeemable convertible noncontrolling interest | 5,702 | 4,783 |
| **Members' deficit** | | |
| Common shares, 12,424,571 shares authorized, and 2,596,073 issued and outstanding at December 31, 2020; 17,000,000 shares authorized and 2,596,073 shares issued and outstanding at March 31, 2021 | 2,000 | 2,000 |
| Incentive shares, 1,854,846 shares authorized and 1,768,614 shares issued and outstanding at December 31, 2020; 3,838,356 shares authorized and 2,144,673 shares issued and outstanding at March 31, 2021 | 637 | 1,175 |
| Accumulated deficit | (56,842) | (72,024) |
| **Total members' deficit** | (54,205) | (68,849) |
| **Total liabilities, redeemable convertible preferred shares, redeemable convertible noncontrolling interest and members' deficit** | $ 45,661 | $ 160,880 |

*See accompanying notes to the condensed consolidated financial statements.*

# Day One Biopharmaceuticals Holding Company, LLC

## Condensed Consolidated Statements of Operations and Comprehensive Loss

### (unaudited)

| (in thousands, except share and per share amounts) | Quarter Ended March 31, 2020 | Quarter Ended March 31, 2021 |
|---|---|---|
| **Operating expenses:** | | |
| Research and development | $ 961 | $ 12,632 |
| General and administrative | 808 | 3,454 |
| **Total operating expenses** | 1,769 | 16,086 |
| **Loss from operations** | (1,769) | (16,086) |
| Interest expense | (3) | (7) |
| Other expense | (2) | (8) |
| Changes in fair value of derivative tranches liability | (218) | — |
| **Net loss and comprehensive loss** | (1,992) | (16,101) |
| Net loss attributable to redeemable convertible noncontrolling interests | (457) | (919) |
| Net loss attributable to Day One Biopharmaceuticals Holding Company, LLC members | $ (1,535) | $ (15,182) |
| Net loss per share, basic and diluted | $ (0.67) | $ (5.99) |
| Weighted-average number of common shares used in computing net loss per share, basic and diluted | 2,284,257 | 2,534,260 |

*See accompanying notes to the condensed consolidated financial statements.*

# Day One Biopharmaceuticals Holding Company, LLC

## Condensed Consolidated Statements of Redeemable Convertible Preferred Shares, Redeemable Noncontrolling Interest and Members' Deficit

### (unaudited)

| (in thousands, except share amounts) | Redeemable Convertible Preferred Shares | | Redeemable Noncontrolling Interest | Common Shares | | Incentive Shares | | Accumulated Deficit | Total Members' (Deficit) |
|---|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | | Shares | Amount | Shares | Amount | | |
| Balance at December 31, 2019 | 5,377,528 | $ 30,504 | $ 5,487 | 2,596,073 | $ 2,000 | 640,184 | $ 111 | $ (12,784) | $ (10,673) |
| Issuance of incentive shares | — | — | — | — | — | 227,188 | — | — | — |
| Cancellations of incentive shares | — | — | — | — | — | (205,412) | — | — | — |
| Share-based compensation expense | — | — | — | — | — | — | 59 | — | 59 |
| Net loss attributable to redeemable convertible noncontrolling interest | — | — | (457) | — | — | — | — | — | — |
| Net loss attributable to Day One Biopharmaceuticals Holding Company, LLC members | — | — | — | — | — | — | — | (1,535) | (1,535) |
| Balance at March 31, 2020 | 5,377,528 | $ 30,504 | $ 5,030 | 2,596,073 | $ 2,000 | 661,960 | $ 170 | $ (14,319) | $ (12,149) |

| | Redeemable Convertible Preferred Shares | | Redeemable Noncontrolling Interest | Common Shares | | Incentive Shares | | Accumulated Deficit | Total Members' (Deficit) |
|---|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | | Shares | Amount | Shares | Amount | | |
| Balance at December 31, 2020 | 9,828,498 | $ 91,964 | $ 5,702 | 2,596,073 | $ 2,000 | 1,768,614 | $ 637 | $ (56,842) | $ (54,205) |
| Issuance of Series B redeemable convertible preferred shares for cash, net of issuance costs of $243 | 4,145,441 | 129,757 | — | — | — | — | — | — | — |
| Share-based compensation expenses | — | — | — | — | — | — | 538 | — | 538 |
| Issuance of incentive shares | — | — | — | — | — | 376,059 | — | — | — |
| Net loss attributable to redeemable noncontrolling interest | — | — | (919) | — | — | — | — | — | — |
| Net loss attributable to Day One Biopharmaceuticals Holding Company, LLC members | — | — | — | — | — | — | — | (15,182) | (15,182) |
| Balance at March 31, 2021 | 13,973,939 | $221,721 | $ 4,783 | 2,596,073 | $ 2,000 | 2,144,673 | $ 1,175 | $ (72,024) | $ (68,849) |

*See accompanying notes to the condensed consolidated financial statements.*

# Day One Biopharmaceuticals Holding Company, LLC
# Condensed Consolidated Statements of Cash Flows
## (unaudited)

| | Quarter Ended March 31, | |
|---|---|---|
| | 2020 | 2021 |
| **Cash flows from operating activities** | | |
| Net loss | $ (1,993) | $ (16,101) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | |
| In-process research and development expense | — | 8,000 |
| Share-based compensation expense | 59 | 538 |
| Depreciation and amortization expense | — | 5 |
| Amortization of operating right-of-use assets | 14 | 44 |
| Non-cash interest expense | 3 | 7 |
| Changes in derivative tranches liabilities | 218 | — |
| Changes in operating assets and liabilities: | | |
| Prepaid expenses and other current assets | (152) | (2,542) |
| Deposits and other long-term assets | (71) | (26) |
| Accounts payable | 43 | 484 |
| Accrued expenses and other current liabilities | (183) | (101) |
| Operating lease liabilities | (23) | (51) |
| Net cash used in operating activities | (2,085) | (9,743) |
| **Cash flows from investing activities** | | |
| Purchases of property and equipment | (88) | |
| Payments for in-process research and development expense | | (8,000) |
| Cash used in investing activities | (88) | (8,000) |
| **Cash flows from financing activities** | | |
| Proceeds from issuance of Series B redeemable convertible preferred shares, net of issuance costs | — | 129,757 |
| Payments of financing issuance costs | — | (872) |
| Net cash provided by financing activities | — | 128,885 |
| Net (decrease) increase in cash and cash equivalents | (2,173) | 111,142 |
| Cash and cash equivalents, beginning of period | 27,332 | 43,728 |
| Cash and cash equivalents, end of period | $ 25,159 | $ 154,870 |
| **Supplemental disclosures of noncash activities** | | |
| Right of use asset capitalization | $ 545 | $ — |
| Deferred financing issuance costs in accrued liabilities | $ — | $ 686 |

*See accompanying notes to the condensed consolidated financial statements.*

# Day One Biopharmaceuticals Holding Company, LLC

# Notes to the Condensed Consolidated Financial Statements
**(unaudited)**

## 1. Description of business, organization and liquidity

***Organization and Business***

The Company is a clinical-stage biopharmaceutical company dedicated to developing and commercializing targeted therapies for patients of all ages with genetically defined cancers. Initially, the Company focuses its clinical development efforts on pediatric patients living with cancer, a vulnerable population that has been underserved in the recent revolution in targeted therapeutics and immuno-oncology. The Company's lead product candidate, DAY101, is an oral, brain-penetrant, highly-selective type II pan-RAF kinase inhibitor. The Company was formed as a limited liability company under the laws of the State of Delaware in November 2018, under the name Hero Therapeutics Holding Company, LLC. Subsequently, the Company changed its name to Day One Therapeutics Holding Company, LLC in December 2018 and to Day One Biopharmaceuticals Holding Company, LLC in March 2020. The Company has two subsidiaries: Day One Biopharmaceuticals, Inc. (formerly Hero Therapeutics Inc. and renamed to DOT Therapeutics -2, Inc. in April 2021)), a wholly owned subsidiary incorporated in Delaware in November 2018, and DOT Therapeutics-1, Inc., a majority-owned subsidiary incorporated in Delaware in December 2019.

***Liquidity***

The Company has incurred significant operating losses since inception and has relied primarily on private equity and convertible note financings to fund its operations. On March 31, 2021, the Company had an accumulated members' deficit of $72.0 million. The Company expects to continue to incur substantial losses, and its ability to achieve and sustain profitability will depend on the successful development, approval and commercialization of product candidates and on the achievement of sufficient revenues to support its cost structure. The Company may never achieve profitability, and unless and until then, the Company will need to continue to raise additional capital. Management expects that existing cash and cash equivalents of $154.9 million as of March 31, 2021, which includes the $130.0 million received in February 2021 in connection with its Series B redeemable convertible preferred shares private financing will be sufficient to fund its current operating plan for at least the next 12 months from the date of issuance of these condensed consolidated financial statements.

***COVID-19 pandemic***

In March 2020, the World Health Organization declared the global novel coronavirus disease 2019, or COVID-19, outbreak a pandemic. The global COVID-19 pandemic continues to evolve rapidly, and we will continue to monitor it closely. While the Company's operations have not been significantly impacted by the COVID-19 pandemic, it cannot at this time predict the specific extent, duration, or full impact that the COVID-19 pandemic will have on its business, financial condition and operations, including ongoing and planned clinical trials and clinical development timelines. The impact of the COVID-19 pandemic on the Company's financial performance will depend on future developments, including the duration and spread of the pandemic, its impact on the Company's clinical trial enrollment, trial sites, clinical research organizations, contract manufacturing organizations, and other third parties with whom the Company does business, its impact on regulatory authorities and its key scientific and management personnel, progress of vaccination and related governmental advisories and restrictions. These developments and the impact of the COVID-19 pandemic on the

# Day One Biopharmaceuticals Holding Company, LLC

# Notes to the Condensed Consolidated Financial Statements
## (unaudited)

financial markets and the overall economy are highly uncertain and cannot be predicted. If the financial markets and/or the overall economy are impacted for an extended period, the Company's business may be materially adversely affected.

## 2. Summary of significant accounting policies

There have been no changes to the significant accounting policies as disclosed in Note 2 to the Company's annual consolidated financial statements for the years ended December 31, 2019 and 2020 included elsewhere in this prospectus, except as noted below.

***Basis of presentation***

The accompanying condensed consolidated financial statements are prepared in conformity with accounting principles generally accepted in the United States of America ("U.S. GAAP") and include the accounts of the Company's subsidiaries. All intercompany transactions and balances have been eliminated in consolidation.

Any reference in these notes to applicable guidance is meant to refer to the authoritative GAAP as found in the Accounting Standards Codification ("ASC") and Accounting Standards Updates ("ASU") of the Financial Accounting Standards Board ("FASB").

In the Company's management opinion, the information furnished in these unaudited condensed consolidated financial statements reflect all adjustments, all of which are of a normal and recurring nature, necessary for a fair presentation of the financial position and results of operations for the reported interim periods. The Company considers events or transactions that occur after the balance sheet date but before the financial statements are issued to provide additional evidence relative to certain estimates or to identify matters that require additional disclosure. The results of operations for interim periods are not necessarily indicative of results to be expected for the full year or any other interim period.

***Use of estimates***

The preparation of condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements, and the reported amounts of expenses during the reporting period. Significant estimates and assumptions made in the accompanying condensed consolidated financial statements include, but are not limited to, the fair value of the redeemable convertible preferred shares, the fair value of the common shares, the fair value of the derivative tranches liability, the valuation of share-based awards, the valuation of deferred tax assets and income tax uncertainties, and accruals for research and development activities. The Company bases its estimates on historical experience and on various other assumptions that are believed to be reasonable. Actual results may differ from those estimates or assumptions.

# Day One Biopharmaceuticals Holding Company, LLC

# Notes to the Condensed Consolidated Financial Statements
## (unaudited)

***Cash and cash equivalents***

The Company considers all highly liquid investments purchased with original maturities of three months or less from the purchase date to be cash equivalents. As of December 31, 2020, the Company did not have any cash equivalents and cash was held in checking accounts. As of March 31, 2021, cash equivalents include investments in money market funds.

***Deferred finance issuance costs***

Deferred finance issuance costs, consisting of legal, accounting, audit and filing fees relating to in-process equity financings, including the Company's initial public offering ("IPO"), are capitalized. The deferred issuance costs will be offset against offering proceeds upon the completion of the financing or the offering. In the event the financing or the offering is terminated or delayed, deferred issuance costs will be expensed immediately as a charge to general and administrative expenses in the condensed consolidated statements of operations and comprehensive loss. As of December 31, 2020 the Company capitalized $36,000 in deferred issuance costs related to its Series B redeemable convertible preferred share private financing. As of March 31, 2021, the Company capitalized $1.6 million of IPO related costs.

***Emerging growth company status***

The Company is an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"). Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. The Company has elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that it (i) is no longer an emerging growth company or (ii) affirmatively and irrevocably opts out of the extended transition period provided in the JOBS Act. As a result, these condensed consolidated financial statements may not be comparable to companies that comply with the new or revised accounting pronouncements as of public company effective dates.

As described in "Recently Adopted Accounting Pronouncements" below, the Company early adopted multiple accounting standards, as the JOBS Act does not preclude an emerging growth company from adopting a new or revised accounting standard earlier than the time that such standard applies to private companies. The Company expects to use the extended transition period for any other new or revised accounting standards during the period in which it remains an emerging growth company.

***Recently issued accounting pronouncements***

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments-Credit Losses: Measurement of Credit Losses on Financial Instruments (Topic 326).* ASU 2016-13 requires measurement and recognition of expected credit losses for financial assets. In April 2019, the FASB issued clarification to ASU 2016-13 within ASU 2019-04, Codification Improvements to Topic 326, Financial Instruments-Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments. The guidance will become effective for the Company for

# Day One Biopharmaceuticals Holding Company, LLC

# Notes to the Condensed Consolidated Financial Statements
**(unaudited)**

fiscal years beginning after December 15, 2022, with early adoption permitted. Effective January 1, 2021, the Company adopted ASU 2016-13 and the adoption did not have any impact on the Company's condensed consolidated financial statements.

In December 2019, the FASB issued ASU No. 2019-12, Simplifying the Accounting for Income Taxes ("ASU 2019-12"), which simplifies the accounting for income taxes, eliminates certain exceptions within ASC 740, Income Taxes, and clarifies certain aspects of the current guidance to promote consistency among reporting entities. ASU 2019-12 is effective for fiscal years beginning after December 15, 2021. Most amendments within the standard are required to be applied on a prospective basis, while certain amendments must be applied on a retrospective or modified retrospective basis. The Company is currently evaluating the impacts that ASU 2019-12 will have on the condensed consolidated financial statements and related disclosures.

In August 2020, the FASB issued ASU No. 2020-06 ("ASU 2020-06") *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity.* ASU 2020-06 will simplify the accounting for convertible instruments by reducing the number of accounting models for convertible debt instruments and convertible preferred shares. Limiting the accounting models will result in fewer embedded conversion features being separately recognized from the host contract as compared with current GAAP. Convertible instruments that continue to be subject to separation models are (1) those with embedded conversion features that are not clearly and closely related to the host contract, that meet the definition of a derivative, and that do not qualify for a scope exception from derivative accounting and (2) convertible debt instruments issued with substantial premiums for which the premiums are recorded as paid-in capital. ASU 2020-06 also amends the guidance for the derivatives scope exception for contracts in an entity's own equity to reduce form-over-substance-based accounting conclusions. The guidance will become effective for the Company for fiscal years beginning after December 15, 2023. Early adoption is permitted, but no earlier than December 15, 2020 including interim periods within that year. The Company is currently evaluating the impact that ASU 2016-13 will have on the condensed consolidated financial statements and related disclosures.

## 3. Fair value measurements

The financial instruments of the Company measured at fair value on a recurring basis are included in cash and cash equivalents. U.S. government money market funds were valued by the Company based on quoted market prices, which represent a Level 1 measurement within the fair value hierarchy.

***Financial assets and liabilities measured on a recurring basis***

The following table sets forth the Company's financial instruments as of December 31, 2020 and March 31, 2021, which are measured at fair value on a recurring basis by level within the fair value hierarchy. These are classified based on the lowest level of input that is significant to the fair value measurement (in thousands):

| | March 31, 2021 | | | |
|---|---|---|---|---|
| | **Total** | **Level 1** | **Level 2** | **Level 3** |
| Money market funds | $152,870 | $152,870 | $ — | $ — |

As of December 31, 2020, the Company did not have any money market funds.

# Day One Biopharmaceuticals Holding Company, LLC

# Notes to the Condensed Consolidated Financial Statements
**(unaudited)**

There were no transfers between Level 1, Level 2 or Level 3 categories in the quarters ended March 31, 2020 or 2021.

## 4. Prepaid expenses and other current assets

Prepaid and other current assets consisted of the following (in thousands):

| | December 31, 2020 | March 31, 2021 |
|---|---|---|
| Prepaid research and development expenses | $ 1,259 | $ 770 |
| Prepaid milestone payment | — | 3,000 |
| Other prepaid expenses and other assets | 84 | 115 |
| Total prepaid expenses and other current assets | $ 1,343 | $ 3,885 |

## 5. Property and equipment, net

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

| | December 31, 2020 | March 31, 2021 |
|---|---|---|
| Furniture and fixtures | $ 78 | $ 78 |
| Leasehold improvements | 15 | 14 |
| Less: accumulated depreciation and amortization | (16) | (20) |
| Property and equipment, net | $ 77 | $ 72 |

Depreciation and amortization expense was immaterial for the three months ended March 31, 2020 and 2021.

## 6. Accrued expenses and other current liabilities

Accrued expenses and other current liabilities consisted of the following (in thousands):

| | December 31, 2020 | March 31, 2021 |
|---|---|---|
| Accrued payroll related expenses | $ 717 | $ 347 |
| Accrued research and development expenses | 554 | 788 |
| Accrued professional service expenses | 298 | 353 |
| Deferred issuance costs | — | 686 |
| Other | 27 | 7 |
| Total accrued expenses and other current liabilities | $ 1,596 | $ 2,181 |

# Day One Biopharmaceuticals Holding Company, LLC

# Notes to the Condensed Consolidated Financial Statements
**(unaudited)**

## 7. Significant agreements

***License agreement with Merck KGaA, Darmstadt, Germany***

On February 10, 2021, Day One Biopharmaceuticals, Inc., the Company's subsidiary, entered into a license agreement (the "MRKDG License Agreement"), with Merck KGaA, Darmstadt, Germany, a pharmaceutical corporation located in Darmstadt, Germany ("Merk KGaA, Darmstadt, Germany"). Under the MRKDG License Agreement, Merk KGaA, Darmstadt, Germany granted to the Company an exclusive worldwide license, with the right to grant sublicenses through multiple tiers, under specified patent rights and know-how for the Company to research, develop, manufacture, and commercialize products containing and comprising the pimasertib and MSC2015103B compounds. The Company also received clinical inventories supplies to use in its research and development activities. The Company's exclusive license grant is subject to a non-exclusive license granted by Merck KGaA, Darmstadt, Germany's affiliate to a cancer research organization and Merk KGaA, Darmstadt, Germany retains the right to conduct, directly or indirectly, certain ongoing clinical studies relating to pimasertib.

Under the MRKDG License Agreement, the Company has obligations to use commercially reasonable efforts to develop and commercialize at least two licensed products in at least two specified major market countries by the year 2029.

In consideration for the rights granted under the MRKDG License Agreement and clinical supplies, the Company made an upfront payment of $8.0 million, which was recorded as research and development expenses, as the technology does not have an alternative future use and supplies are used for research activities. The Company may also be required to make additional payments of up to $367.0 million based upon the achievement of specified development, regulatory, and commercial milestones, as well a high, single-digit royalty percentage on future net sales of licensed products, if any. Milestones and royalties are contingent upon future events and will be recorded when the milestones are achieved and when payments are due.

The term of the MRKDG License Agreement will expire on a licensed product-by-licensed product and country-by-country basis upon the expiration of the Company's obligation to pay royalties to the licensor with respect to such licensed product in such country and will expire in its entirety upon the expiration of all of the Company's payment obligations with respect to all licensed products and all countries under the MRKDG License Agreement.

***Takeda assets purchase agreement***

On December 16, 2019, DOT-1 Therapeutics, Inc., the majority owned subsidiary ("DOT-1"), entered into an asset purchase agreement (the "Takeda Asset Agreement"), with Millennium Pharmaceuticals, Inc., an affiliate of Takeda Pharmaceutical Company Limited ("Takeda"). Pursuant to the Takeda Asset Agreement, DOT-1 purchased certain technology rights and know-how related to TAK-580 (which is now DAY101) that provides new approach for treating patients with primary brain tumors or brain metastases of solid tumors. DOT-1 also received clinical inventories supplies to use in the Company's research and development activities of such RAF-inhibitor and an assigned investigator clinical trial agreement. Takeda also assigned to DOT-1 its exclusive license agreement, or the Viracta License Agreement, with Sunesis Pharmaceuticals, Inc. (which recently merged with Viracta), or Viracta. Takeda also granted DOT-1 a worldwide, sublicensable exclusive license under specified patents and know-how and non-exclusive license under other patents and know-how generated by Takeda under the Takeda Asset Agreement. The Company also granted Takeda a grant back license, as defined

in the agreement, which is terminable either automatically or by DOT-1 in the event Takeda does not achieve specified development milestones within the applicable timeframes set forth under the Takeda Asset Agreement.

In consideration for the sale and assignment of assets and the grant of the license under the Takeda Asset Agreement, DOT-1 made an upfront payment of $1.0 million in cash and issued 9,857,143 shares of Series A redeemable convertible preferred stock in DOT-1. The fair value of issued shares was estimated as $9.9 million, based on the price paid by other investors for issued shares in the Series A financing of DOT-1 Therapeutics, Inc. To the extent activities by Takeda with respect to its exploitation of a product containing DAY101 in its field triggers a milestone under the Viracta License Agreement, Takeda will, at DOT-1 election, pay such milestone directly to Viracta.

The term of the Takeda Asset Agreement will expire on a country-by-country basis upon expiration of all assigned patent rights and all licensed patent rights in such country.

***Viracta license agreement***

On December 16, 2019, DOT-1 amended and restated the Viracta License Agreement that was assigned pursuant to the Takeda Asset Agreement. Under the Viracta License Agreement, DOT-1 received a worldwide exclusive license under specified patent rights and know-how to develop, use, manufacture, and commercialize products containing compounds binding the RAF protein family.

DOT-1 paid $2.0 million upfront in cash to Viracta, which was recorded as research and development expenses. DOT-1 made a milestone payment of $3.0 million to Viracta in February 2021 which is recorded as prepaid expenses and other current assets in the condensed consolidated balance sheet as of March 31, 2021, until the first patient is enrolled in the clinical trial and the milestone is met. DOT-1 is also required to make additional milestone payments of up to $54 million upon achievement of specified development and regulatory milestones for each licensed product in two indications, with milestones payable for the second indication to achieve a specified milestone event being lower than milestones payable for the first indication. Additionally, if DOT-1 obtains a priority review voucher with respect to a licensed product and sell such priority review voucher to a third party or use such priority review voucher, DOT-1 is obligated to pay Viracta a specified percentage in the mid-teen digits of all net consideration received from any such sale or of the value of such used priority review voucher, as applicable. Commencing on the first commercial sale of a licensed product in a country, DOT-1 is obligated to pay tiered royalties ranging in the mid-single-digit percentages on net sales of licensed products, if any. The obligation to pay royalties will end on a country-by-country and licensed product-by-licensed product basis commencing on the first commercial sale in a country and continuing until the later of: (i) the expiration of the last valid claim of the Viracta licensed patents, jointly owned collaboration patents or specified patents owned by the Company covering the use or sale of such product in such country, (ii) the expiration of the last statutory exclusivity pertaining to such product in such country or (iii) the tenth anniversary of the first commercial sale of such product in such country. No milestones were achieved and recorded as of March 31, 2021 and December 31, 2020.

The term of the Viracta License Agreement will expire on a licensed product-by-licensed product and country-by-country basis upon the expiration of the Company’s obligation to pay royalties to Viracta with

# Day One Biopharmaceuticals Holding Company, LLC

# Notes to the Condensed Consolidated Financial Statements
**(unaudited)**

respect to such product in such country. DOT-1 has the right to terminate the Viracta License Agreement with respect to any or all of the licensed products at will upon a specified notice period.

## 8. Commitments and contingencies

***Leases***

The Company entered into a lease agreement for its corporate office facility in South San Francisco, California in March 2020, which expires in three years. The Company can extend the lease term for additional three years at market rates upon the notice of extension. The Company is obligated to pay monthly rent expense and its pro rata share of utilities, common area maintenance expenses and property taxes. The landlord also provided an allowance of $10,000 for any tenant improvements. The Company concluded that it is an operating lease. Common area expenses are a non-lease component and a variable consideration and included in operating expenses as incurred. The extension period has not been included in the determination of the ROU asset or the lease liability for operating leases as the Company concluded that it is not reasonably certain that it would exercise this option.

The Company determined the lease IBR based on the information available at the applicable lease commencement date as the Company's lease did provide an implicit rate. The IBR is determined by using the rate of interest that the Company would pay to borrow on a collateralized basis an amount equal to the lease payments for a similar term and in a similar economic environment where the asset is located. The Company determined the amounts of its lease liabilities using an IBR of 8%. As of March 31, 2021, the remaining lease term was 1.92 years.

The Company's lease does not require any contingent rental payments, impose financial restrictions, or contain any residual value guarantees.

Amortization of right-of-use assets is recognized on a straight-line basis over the applicable lease term. Amortization was $14,000 and $44,000 for the quarters ended March 31, 2020 and 2021, respectively. Cash paid for amounts included in the measurement of operating lease liabilities was $23,000 and $51,000 for the quarters ended March 31, 2020 and 2021, respectively. Variable payments expensed during the quarters ended March 31, 2020 and 2021 were immaterial.

As of March 31, 2021, the future lease obligations were as follows (in thousands):

| | |
|---|---|
| Remaining nine months in 2021 | $154 |
| 2022 | 212 |
| 2023 | 18 |
| Total future minimum lease payments | 384 |
| Less: Imputed interest | (26) |
| Present value of operating lease liabilities | $358 |

# Day One Biopharmaceuticals Holding Company, LLC

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***Research and development agreements***

The Company enters into contracts in the normal course of business with clinical research organizations for clinical trials, with contract manufacturing organizations for clinical supplies manufacturing and with other vendors for preclinical studies, supplies and other services and products for operating purposes. These contracts generally provide for termination on notice, with the exception of one vendor with a potential termination fee if a purchase order is cancelled within a specified time and of another vendor where labor costs are non-cancellable after the approval of the project plan. As of December 31, 2020, and March 31, 2021, there were no amounts accrued related to termination and cancellation charges as these are not probable.

***License agreements***

The Company entered into the license agreements, as disclosed in Note 7, pursuant to which the Company is required to pay milestones contingent upon meeting of specific events. No such milestones were achieved or payable as of December 31, 2020 and March 31, 2021. The Company is required to pay royalties on sales of products developed under these agreements. All products are in development as of December 31, 2020 and March 31, 2021, and no such royalties were due.

***Legal proceedings***

The Company, from time to time, may be party to litigation arising in the ordinary course of business. The Company is not subject to any material legal proceedings, and to the best of its knowledge, no material legal proceedings are currently pending or threatened.

***Indemnification agreements***

In the normal course of business, the Company enters into contracts and agreements that contain a variety of representations and warranties and provide for indemnification for certain liabilities. The exposure under these agreements is unknown because it involves claims that may be made against it in the future but have not yet been made. To date, the Company has not paid any claims or been required to defend any action related to its indemnification obligations. However, the Company may record charges in the future as a result of these indemnification obligations. The Company also has indemnification obligations to its directors and executive officers for specified events or occurrences, subject to some limits, while they are serving at its request in such capacities. There have been no claims to date and the Company believes the fair value of these indemnification agreements is minimal. Accordingly, the Company had not recorded any liabilities for these agreements as of December 31, 2020 and March 31, 2021.

## 9. Redeemable convertible preferred shares

In February 2021, the Company issued 4,145,441 Series B redeemable convertible preferred shares at a price of $31.3597 per share for gross cash proceeds of $130.0 million. The Company incurred issuance costs of $243,000.

# Day One Biopharmaceuticals Holding Company, LLC

## Notes to the Condensed Consolidated Financial Statements
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In December 2019, the Company issued 4,450,971 Series A redeemable convertible preferred shares at a price of $6.7401 per share for gross cash proceeds of $30.0 million and issued 926,557 shares upon the conversion of the outstanding convertible note and accrued interest of $2.1 million. The Company incurred issuance costs of $95,000.

In connection with the initial issuance of the Series A redeemable convertible preferred shares, the Company had an obligation to sell an additional 4,450,970 Series A shares at $6.7401 per share upon achievement of certain milestones in two tranches. The Company determined that the obligation to sell additional shares is a freestanding financing instrument and a liability. The Company estimated the fair value of the liability to be $1.5 million and recorded it as a reduction to redeemable convertible preferred shares and as a derivative tranche liability in its condensed consolidated balance sheet at the issuance date in December 2019. For the three months ended March 31, 2020, the Company remeasured the derivative tranche liability by $0.2 million.

In November and December 2020, the Board approved the settlement of tranches and the Company issued 4,450,970 shares for gross cash proceeds of $30.0 million. The Company incurred issuance costs of $22,000. As of December 31, 2020, no derivative tranche liabilities were outstanding.

The authorized, issued, and outstanding Series A and Series B redeemable convertible preferred shares as of December 31, 2020 and March 31, 2021 were as follows:

| | December 31, 2020 | | | |
|---|---|---|---|---|
| | Shares Authorized | Shares Issued and Outstanding | Liquidation Value | Carrying Value |
| Series A redeemable convertible preferred shares | 9,828,498 | 9,828,498 | $ 66,245 | $ 91,964 |

| | March 31, 2021 | | | |
|---|---|---|---|---|
| | Shares Authorized | Shares Issued and Outstanding | Liquidation Value | Carrying Value |
| Series A redeemable convertible preferred shares | 9,828,498 | 9,828,498 | $ 66,245 | $ 91,964 |
| Series B redeemable convertible preferred shares | 4,145,441 | 4,145,441 | $ 130,000 | $ 129,757 |

Series B and Series A redeemable convertible preferred shares have the following rights, preferences and privileges in accordance with the Day One Biopharmaceuticals Holdings, LLC's Operating Agreement, as amended in February 2021 (the "Operating Agreement"):

***Voting rights***

The holders of the preferred shares vote together with the holders of the common shares as a single class and on an as converted to common share basis.

***Conversion***

Series B and Series A redeemable convertible preferred shares are convertible at the option of a holder into common shares at a conversion rate equal to the original purchase price of $31.3597 and $6.7401, respectively

# Day One Biopharmaceuticals Holding Company, LLC

## Notes to the Condensed Consolidated Financial Statements
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(subject to anti-dilution and other adjustments in accordance with the Operating Agreement). The Series B and Series A shares automatically convert to common shares at then applicable conversion rate upon written consent of holders of at least 60% of the then outstanding preferred shares and upon the closing of the sale of common shares to the public at a price of at least $31.3597 and $20.22 per share, respectively (subject to appropriate adjustments) in a firm-commitment underwritten public offering resulting in at least $50.0 million of gross proceeds to the Company, provided that common shares are listed for trading on the Nasdaq Stock Market or the New York Stock Exchange.

***Anti-dilution and other protective rights***

The holders of the Series B and Series A redeemable convertible preferred shares have proportional anti-dilution protection for shares splits, shares dividends and similar recapitalizations. Subject to certain exclusions, anti-dilution price protection for additional sales of securities by the Company for consideration per share less than the applicable conversion rate per share of any series of redeemable convertible preferred shares, shall be on a weighted average basis, as defined in the Operating Agreement.

The Company cannot without the written consent or affirmative vote of the holders of 60% of outstanding redeemable convertible preferred shares, which shall include the written consent or affirmative vote of at least one preferred member who is a holder of solely Series B redeemable convertible preferred shares (a) to create, or authorize, or issue any class or series of capital shares unless the same ranks junior to the redeemable convertible preferred shares with respect to the distribution of assets on the liquidation, dissolution or winding up of the LLC, the payment of dividends and rights of redemption; (b) reclassify, alter or amend any existing security of the LLC that is junior or pari passu with the redeemable convertible preferred shares in distribution of assets on the liquidation, dissolution or winding up of the LLC, payment of dividends or rights of redemption; (c) with certain exceptions, set aside or make any distribution in respect of, or redeem, or pay or declare any dividend, purchase or otherwise acquire any of, the shares or other equity securities; (d) cause any subsidiary to pay or declare any dividend or make any distribution on any shares of capital stock of such subsidiary (unless the same is approved by the Board, which approval must include the affirmative vote, consent or approval of at least two of the preferred managers); (e) effect any merger, consolidation, reclassification, liquidation, dissolution, winding-up, recapitalization, or reorganization or sale or exclusive license of all or substantially all of its assets; (f) amend, alter, repeal or waive any provision of this Agreement or the certificate of formation; (g) increase the number of authorized preferred shares, common shares or incentive shares; (h) acquire any new preclinical or clinical development program/compound or an equity interest in any entity that is not a wholly owned subsidiary of the LLC (unless the same is approved by the Board, which approval must include the affirmative vote, consent or approval of at least two of the preferred managers); (i) issue any security of any subsidiary other than to the LLC (unless the same is approved by the Board, which approval must include the affirmative vote, consent or approval of at least two of the preferred managers); or (j) incur any indebtedness or issue any guaranty of any third-party obligation in an amount greater than $1.0 million (unless the same is approved by the Board, which approval must include the affirmative vote, consent or approval of at least two of the preferred managers), other than ordinary course trade payables, borrowing between the LLC and its subsidiaries or between the LLC's subsidiaries.

# Day One Biopharmaceuticals Holding Company, LLC

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***Liquidation preference***

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, the holders of redeemable convertible preferred shares are entitled to be paid before any holders of common shares (Note 10) and incentive shares (Note 11), a per share amount equal to the difference between the original issue price and the amount previously distributed to redeemable convertible preferred shares holders in accordance with the distribution provisions in the Operating Agreement, if any. After the preferential payments have been made in full to the holders of redeemable convertible preferred shares, the remaining assets of the Company available for distribution will be distributed among the holders of redeemable convertible preferred shares, common shares and incentive shares, pro rata based on the number of incentive shares and common shares held by each such holder, treating for this purpose all redeemable convertible preferred shares as if they had been converted to common shares immediately prior to such liquidation, dissolution or winding up. No such distributions will be made to the holders of incentive shares in respect to unvested incentive shares, unless it is approved by the Board and include at least two of the preferred members, and until the cumulative amount to be distributed to all shares subsequent to the issuance of incentive share exceeds the amount of such incentive share's participation threshold.

***Distributions preference***

Distributions, when determined by the Board, are payable first, to the holders of the redeemable convertible preferred shares, pro rata in proportion to the liquidation preference amounts in respect of the redeemable convertible preferred shares held by such holders; thereafter, to the members in proportion to the number of shares held by such members, on as converted basis; provided, however, that no distributions shall be made to unvested incentive shares and until the cumulative amount to be distributed to all shares subsequent to the issuance of incentive share exceeds the amount of such incentive share's participation threshold.

***Redemption***

The Series B and Series A redeemable convertible preferred shares are not redeemable except in the event of certain effected deemed liquidation events. As of December 31, 2020 and March 31, 2021, the Company classified Series B and Series A redeemable convertible preferred shares as temporary equity in accordance with authoritative guidance for the classification and measurement of potentially redeemable securities whose redemption is based upon certain change in control events outside of the Company's control, including liquidation, sale or transfer of control of the Company. The Company did not adjust the carrying value of the Series B and Series A redeemable convertible preferred shares to the deemed redemption values of such shares since a liquidation event was not probable.

## 10. Common shares

As of December 31, 2020 and March 31, 2021, the Company was authorized to issue 12,424,571 and 17,000,000 common shares, respectively. Common shares' holders are entitled to vote and elect one Board member. As of December 31, 2020 and March 31, 2021, the Company had 2,596,073 issued and outstanding common shares. As of December 31, 2020 and March 31, 2021, the Company reserved 9,828,498 and 13,973,939 shares upon conversion of redeemable convertible preferred shares into common shares, respectively.

# Day One Biopharmaceuticals Holding Company, LLC

# Notes to the Condensed Consolidated Financial Statements
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In November 2018, the Company entered into common shares purchase agreements with two founders of the Company. The individuals purchased a total of 1,200,000 common shares for a total purchase price of $300. Shares vest monthly for two and four years, respectively. Vesting for a certain number of shares was accelerated upon the Company's closing of its Series A redeemable convertible preferred share financing. The Company also has an option for a period of ninety days after the individual's employment is terminated either voluntarily or involuntarily to repurchase the unvested common shares at a price that is the lower of the original price per share paid by the founder for such stock or the fair value as of the date of such repurchase. As of December 31, 2020, and March 31, 2021, there were 83,340 and 20,841 shares unvested, respectively.

## 11. Incentive shares and share-based compensation

The Company grants incentive shares under the Incentive Share Plan and is authorized to issue 3,838,356 incentive shares as of March 31, 2021. Incentive shares are a separate non-voting class of shares that participate in distributions only after incentive shares vest, unless it is approved by the Board and include at least two of the preferred members, and a participation threshold is met. The incentive shares represent profits interests in the Company, which is an interest in the increase in the Company's value over the participation threshold, as defined in the Operating Agreement and as determined at the time of grant. A holder of incentive share has the right to participate in distributions of profits only in excess of the participation threshold. The participation threshold is based on the valuation of the Company's common shares on or around the grant date.

The Company grants incentive shares to employees and non-employees, which generally vest over a four-year period with cliff vesting for the first year. The Board approves vesting terms and conditions of each award and can accelerate vesting of incentive shares on an award-by-award basis. Vesting of incentive shares is accelerated for all unvested shares upon a termination of services without cause within 12 months after the consummation of a change of control transaction.

The fair value of the incentive shares is estimated using an option pricing model with the following assumptions:

| | Quarter Ended March 31, | |
|---|---|---|
| | **2020** | **2021** |
| Common share fair value | $ 1.88 – 1.98 | $ 14.78 – 17.45 |
| Participating threshold | 0.62 | 14.78 |
| Risk free rate | 0.30% | 0.14% |
| Volatility | 78.00% | 72.90% |
| Time to liquidity (in years) | 3.3 | 0.20 – 1.80 |
| Grant date fair value | $ 1.65 | $ 10.52 |

The Company used the option pricing model to estimate the fair value of each incentive shares award on the date of grant. The members' equity value was based on a recent enterprise valuation analysis performed and common share fair value. The participation threshold amounts are determined by the Board at the time of grant. The expected life of the awards granted during the period was determined based on an expected time to the liquidation event. The Company applied the risk-free interest rate based on the U.S. Treasury yield in effect at the time of the grant consistent with the life of the award. The expected volatility is based on a peer group in

the industry in which the Company does business consistent with the expected time to liquidity. The dividend yield was set at zero as the underlying security does not and is not expected to pay a dividend.

***Fair value of common share***

Management's approach to estimate the fair value of the common share is consistent with the methods outlined in the American Institute of Certified Public Accountants' Practice Aid, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation (*the "Practice Aid"), considering a number of objective and subjective factors including: valuations of common shares performed with the assistance of independent third-party valuation specialists; the Company's stage of development and business strategy, including the status of research and development efforts, and the material risks related to the business and industry; the Company's results of operations and financial position, including levels of available capital resources; the valuation of publicly traded companies in the life sciences and biotechnology sectors, as well as recently completed mergers and acquisitions of peer companies; the lack of marketability of the common shares; the prices of redeemable convertible preferred shares sold to investors in arm's length transactions and the rights, preferences, and privileges of the Company's redeemable convertible preferred shares relative to those of common shares; the likelihood of achieving a liquidity event for the holders of the common and redeemable convertible preferred shares, such as an initial public offering or a sale, given prevailing market conditions. The fair value of the common shares is approved by the Board until such time as the Company shares are listed on an established stock exchange or national market system.

The incentive shares have been classified as equity awards and share-based compensation expense is based on the grant date fair value of the award.

The following table provides a summary of the stock option activity:

| | Number of Shares | Weighted Average Grant Date Fair Value |
|---|---|---|
| Outstanding at December 31, 2020 | 1,768,614 | $ 2.93 |
| Granted | 376,059 | $ 10.52 |
| Outstanding at March 31, 2021 | 2,144,673 | $ 4.33 |

Share-based compensation expense recorded in the accompanying condensed consolidated statements of operations and comprehensive loss is as follows (in thousands):

| | Quarter Ended March 31, | |
|---|---|---|
| | 2020 | 2021 |
| Research and development expense | $ 15 | $ 119 |
| General and administrative expense | 44 | 419 |
| Total share-based compensation expense | $ 59 | $ 538 |

As of March 31, 2021, there was $8.0 million of total unrecognized compensation expense related to 1,859,939 unvested incentive shares. The expense is expected to be recognized over a weighted-average period of 2.21 years.

# Day One Biopharmaceuticals Holding Company, LLC

# Notes to the Condensed Consolidated Financial Statements
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## 12. Income taxes

Day One Biopharmaceuticals Holdings Company, LLC is treated as a partnership for tax purposes, and thus, not subject to income taxes. With respect to the Company's consolidated subsidiaries, these entities are treated as corporations for tax purposes and are subject to income taxes which have been included in the consolidated financial statements. The is no income tax expense recognized during the three months ended March 31, 2020 and 2021 as the consolidated subsidiaries continue to generate operating losses and tax losses.

## 13. Defined contribution plan

The Company maintains an employee savings plan pursuant to Section 401(k) of the Internal Revenue Code. All employees are eligible to participate provided that they meet the requirements of the plan. The Company has elected to not make matching contributions under the plan.

## 14. Net loss per share

***Net Loss Per Share***

Basic and diluted net loss per share attributable to common shareholders is calculated as follows (in thousands except share and per share amounts):

| | Quarter Ended March 31, | |
|---|---|---|
| | **2020** | **2021** |
| Net loss and comprehensive loss | $ (1,992) | $ (16,101) |
| Net loss attributable to redeemable convertible noncontrolling interest | (457) | (919) |
| Net loss attributable to Day One Biopharmaceuticals Holding Company, LLC members | (1,535) | (15,182) |
| Net loss per share attributable to Day One Biopharmaceuticals Holding Company, LLC members, basic and diluted | $ (0.67) | $ (5.99) |
| Weighted-average number of shares used in computing net loss per share, basic and diluted | 2,284,257 | 2,534,260 |

The following outstanding potentially dilutive securities have been excluded from the calculation of diluted net loss per share, as their effect is anti-dilutive:

| | Quarter Ended March 31, | |
|---|---|---|
| | **2020** | **2021** |
| Redeemable convertible preferred shares | 5,377,528 | 13,973,939 |
| Incentive shares | 661,960 | 2,144,673 |
| Unvested common shares | 270,837 | 20,841 |
| | **6,310,325** | **16,139,453** |

# Day One Biopharmaceuticals Holding Company, LLC

# Notes to the Condensed Consolidated Financial Statements
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## 15. Redeemable noncontrolling interest

DOT Therapeutics-1, Inc., the Company's subsidiary, issued Series A redeemable convertible preferred shares to Takeda for the Takeda Assets Agreement (Note 7). The Company concluded that it represents a redeemable noncontrolling interest.

The Company adjusts the carrying value of redeemable noncontrolling interest to allocate net losses of the subsidiary to Takeda. Transfers to and from the redeemable noncontrolling interest represent changes in ownership and the allocation of Series A redeemable convertible preferred shares issuance costs issued by the subsidiary.

## 16. Subsequent events

The Company has evaluated subsequent events for recognition or disclosure through the filing date of these condensed consolidated financial statements with the U.S. Securities and Exchange Commission on May 4, 2021.

On May 4, 2021, the Company entered into a Stock Exchange Agreement with Millennium Pharmaceuticals, Inc. an affiliate of Takeda. Pursuant to the terms of the Millennium Stock Exchange Agreement and the Plan of Conversion, Millennium Pharmaceuticals, Inc. agreed to exchange 9,857,143 shares of Series A redeemable convertible preferred stock of DOT Therapeutics-1, Inc., the Company's subsidiary, for 2,782,960 shares of the Company's common stock pursuant to and contingent upon the effectiveness of the Conversion, and subject to the satisfaction of the other terms and conditions of the Millennium Stock Exchange Agreement.

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***shares***


***Common stock***

# Prospectus

**J.P. Morgan** **Cowen** **Piper Sandler**

**Wedbush PacGrow**

, 2021

# Part II

## Information not required in the prospectus

## Item 13. Other expenses of issuance and distribution

The following table sets forth all costs and expenses, other than underwriting discounts and commissions, paid or payable by the Registrant in connection with the sale of the common stock being registered. All amounts shown are estimates except for the SEC registration fee, the Financial Industry Regulatory Approval, or FINRA, filing fee and the Nasdaq Global Market listing fee:

| | Amount paid or to be paid |
|---|---|
| SEC registration fee | $ 10,910 |
| FINRA filing fee | 15,500 |
| The Nasdaq Global Market listing fee | * |
| Printing and engraving expenses | * |
| Legal fees and expenses | * |
| Accounting fees and expenses | * |
| Transfer agent and registrar fees and expenses | * |
| Miscellaneous expenses | * |
| Total | $ * |

* To be provided by amendment

## Item 14. Indemnification of directors and officers

Section 145 of the DGCL authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers under certain circumstances and subject to certain limitations. The terms of Section 145 of the DGCL are sufficiently broad to permit indemnification under certain circumstances for liabilities, including reimbursement of expenses incurred, arising under the Securities Act of 1933, as amended, or the Securities Act.

As permitted by the DGCL, the Registrant's restated certificate of incorporation to be effective in connection with the completion of this offering contains provisions that eliminate the personal liability of its directors for monetary damages for any breach of fiduciary duties as a director, except liability for the following:

- any breach of the director's duty of loyalty to the Registrant or its stockholders;
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- under Section 174 of the DGCL (regarding unlawful dividends and stock purchases); or
- any transaction from which the director derived an improper personal benefit.

As permitted by the DGCL, the Registrant's restated bylaws to be effective in connection with the completion of this offering provide that:

- the Registrant is required to indemnify its directors and executive officers to the fullest extent permitted by the DGCL, subject to limited exceptions;
- the Registrant may indemnify its other employees and agents as set forth in the DGCL;

- the Registrant is required to advance expenses, as incurred, to its directors and executive officers in connection with a legal proceeding to the fullest extent permitted by the DGCL, subject to limited exceptions; and
- the rights conferred in the restated bylaws are not exclusive.

Prior to the completion of this offering, the Registrant intends to enter into new indemnification agreements with each of its current directors and executive officers to provide these directors and executive officers additional contractual assurances regarding the scope of the indemnification set forth in the Registrant's restated certificate of incorporation and restated bylaws and to provide additional procedural protections. There is no pending litigation or proceeding involving a director or executive officer of the Registrant for which indemnification is sought. Reference is also made to the underwriting agreement to be filed as Exhibit 1.1 to this registration statement, which provides for the indemnification of executive officers, directors and controlling persons of the Registrant against certain liabilities. The indemnification provisions in the Registrant's restated certificate of incorporation, restated bylaws and the indemnification agreements entered into between the Registrant and each of its directors and executive officers may be sufficiently broad to permit indemnification of the Registrant's directors and executive officers for liabilities arising under the Securities Act.

The Registrant intends to have directors' and officers' liability insurance for securities matters prior to the completion of this offering.

## Item 15. Recent sales of unregistered securities

The following lists set forth information regarding all securities sold or granted by the Registrant from the Registrant's formation in November 1, 2018 through the date of this prospectus that were not registered under the Securities Act, and the consideration, if any, received by the Registrant for such securities:

***(a) Incentive shares***

From November 1, 2018 and through April 15, 2021, the Registrant has granted to its employees, directors, consultants and other service providers an aggregate of 3,247,058 incentive shares under the Company's Incentive Share Plan, 141,325 of which were granted as capital interests without a participation threshold, and 3,105,874 of which were granted as profits interests with participation thresholds from $0.0001 to $17.45 per share. The issuances of the securities described above were deemed to be exempt from registration pursuant to Section 4(a)(2) of the Securities Act or Rule 701 promulgated under the Securities Act as transactions pursuant to compensatory benefit plans.

***(b) Preferred shares***

In an initial closing and two milestone closings in December 2019, November 2020 and December 2020, respectively, the Registrant issued and sold to three accredited investors an aggregate of 8,901,941 Series A redeemable convertible preferred shares at a purchase price of $6.7401 per share, for aggregate consideration of approximately $60.0 million. Additionally, in December 2019, Canaan cancelled the Registrant's indebtedness for an aggregate of 926,557 Series A redeemable convertible preferred shares. This transaction was exempt from the registration requirements of the Securities Act in reliance upon Section 4(a)(2) of the Securities Act or Regulation D promulgated under the Securities Act.

In February 2021, the Registrant issued and sold to 24 accredited investors an aggregate of 4,145,441 Series B redeemable convertible preferred shares at a purchase price of $31.3597 per share, for aggregate consideration

of approximately $130.0 million. This transaction was exempt from the registration requirements of the Securities Act in reliance upon Section 4(a)(2) of the Securities Act or Regulation D promulgated under the Securities Act.

***(c) Convertible promissory notes***

In December 2018, the Registrant issued and sold in a private placement to Canaan XI L.P., a convertible promissory note with a principal amount of $1.0 million, or the 2018 Note. The 2018 Note accrued interest at a rate of 6% per annum.

In July 2019, the Registrant issued and sold in a private placement to Canaan XI L.P. a convertible promissory note with a principal amount of $1.0 million, or the 2019 Note. The 2019 Note accrued interest at a rate of 6% per annum.

As described above, the 2018 Note and the 2019 Notes, as well as the total accrued interest from these notes, were automatically converted into 926,557 shares of the Registrant's Series A convertible preferred shares in the Series A convertible preferred share financing.

***(d) Shares of common stock***

On May 4, 2021, the Registrant entered into a Stock Exchange Agreement (the "Exchange Agreement") with Millennium Pharmaceuticals, Inc., an affiliate of Takeda Pharmaceutical Company Limited. Pursuant to the terms are finalized of the Stock Exchange Agreement and the Plan of Conversion, Millennium agreed to exchange 9,857,143 shares of Series A redeemable convertible preferred stock of DOT Therapeutics-1, Inc., a subsidiary of the Registrant, for 2,782,960 shares of the Registrant's common stock pursuant to and contingent upon the effectiveness of the Conversion, and subject to the satisfaction of the other terms and conditions of the Millenium Stock Exchange Agreement. The Registrant believes that the transaction will be exempt from the registration requirements of the Securities Act in reliance upon Section 4(a)(2) of the Securities Act or Regulation D promulgated under the Securities Act.

None of the foregoing transactions involved any underwriters, underwriting discounts or commissions or any public offering, and the Registrant believes each transaction was exempt from the registration requirements of the Securities Act as stated above. All recipients of the foregoing transactions either received adequate information about the Registrant or had access, through their relationships with the Registrant, to such information. Furthermore, the Registrant affixed appropriate legends to the share certificates and instruments issued in each foregoing transaction setting forth that the securities had not been registered and the applicable restrictions on transfer.

## Item 16. Exhibits and financial statement schedules

## (a) Exhibits.

| Exhibit Number | Description |
|---|---|
| 1.1* | Form of Underwriting Agreement. |
| 2.1 | Form of Plan of Conversion. |
| 3.1 | Amended and Restated Operating Agreement of the Registrant, dated February 1, 2021, as amended. |
| 3.2 | Form of Certificate of Incorporation of Day One Biopharmaceuticals, Inc. (to be effective upon completion of the Registrant's conversion from a limited liability company to a corporation). |
| 3.3 | Form of Bylaws of Day One Biopharmaceuticals, Inc. (to be effective upon completion of the Registrant's conversion from a limited liability company to a corporation). |
| 3.4 | Form of Restated Certificate of Incorporation of Day One Biopharmaceuticals, Inc. (to be effective upon the completion of this offering). |
| 3.5 | Form of Amended and Restated Bylaws of Day One Biopharmaceuticals, Inc. (to be effective upon the completion of this offering). |
| 4.1* | Form of Common Stock Certificate. |
| 4.2 | Amended and Restated Investors' Rights Agreement, dated February 1, 2021, by and among the Registrant and certain of its stockholders. |
| 5.1* | Opinion of Fenwick & West LLP. |
| 10.1 | Form of Indemnification Agreement with directors and officers. |
| 10.2^ | 2021 Equity Incentive Plan and forms of award agreements. |
| 10.3^ | 2021 Employee Stock Purchase Plan and forms of award agreements. |
| 10.4† | Office Lease, dated February 8, 2020, by and between Kashiwa Fudosan America, Inc. and Day One Therapeutics, Inc. |
| 10.5† | Asset Transfer and License Agreement, effective as of December 16, 2019, by and between DOT Therapeutics-1, Inc. and Millennium Pharmaceuticals, Inc. |
| 10.6† | License Agreement for RAF, effective as of December 16, 2019, by and between Sunesis Pharmaceuticals, Inc. and DOT Therapeutics-1, Inc. |
| 10.7† | License Agreement, dated February 10, 2021, by and between Merck KGaA, Darmstadt, Germany and Day One Biopharmaceuticals, Inc. |
| 10.8 | Stock Exchange Agreement, dated May 4, 2021, by and between Day One BioPharmaceuticals Holding Co., LLC and Millennium Pharmaceuticals, Inc. |
| 21.1 | Subsidiaries of the Registrant. |
| 23.1 | Consent of Ernst & Young LLP, an Independent Registered Public Accounting Firm. |
| 23.2* | Consent of Fenwick & West LLP (included in Exhibit 5.1). |
| 24.1 | Power of Attorney (included in the signature page to this Registration Statement on Form S-1). |

* To be filed by amendment

† Registrant has omitted portions of the exhibit as permitted under Item 601(b)(10) of Regulation S-K.

^ Indicates management contract or compensatory plan.

## (b) Financial statement schedules

No financial statement schedules are provided because the information called for is not required or is shown either in the consolidated financial statements or notes.

## Item 17. Undertakings

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned Registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

## Signatures

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this registration statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of South San Francisco, State of California, on the 4th day of May, 2021.

**DAY ONE BIOPHARMACEUTICALS HOLDING COMPANY, LLC**

By: /s/ Jeremy Bender, Ph.D., M.B.A.
**Jeremy Bender, Ph.D., M.B.A.**
**Chief Executive Officer**

## Power of attorney

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Jeremy Bender, Ph.D., M.B.A. and Charles N. York II, and each of them, as his or her true and lawful attorneys-in-fact, proxies and agents, each with full power of substitution and resubstitution and full power to act without the other, for him or her in any and all capacities, to sign any and all amendments to this registration statement (including post-effective amendments or any abbreviated registration statement and any amendments thereto filed pursuant to Rule 462(b) increasing the number of securities for which registration is sought), and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact, proxies and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact, proxies and agents, or their or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement on Form S-1 has been signed by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|---|---|---|
| /s/ Jeremy Bender, Ph.D., M.B.A.<br>Jeremy Bender, Ph.D., M.B.A. | Chief Executive Officer and Director<br>*(Principal Executive Officer)* | May 4, 2021 |
| /s/ Charles N. York II, M.B.A.<br>Charles N. York II, M.B.A. | Chief Operating Officer and Chief Financial Officer<br>*(Principal Accounting and Financial Officer)* | May 4, 2021 |
| /s/ Julie Grant, M.Phil., M.B.A.<br>Julie Grant, M.Phil., M.B.A. | Chair and Director | May 4, 2021 |
| /s/ Dan Becker, M.D., Ph.D.<br>Dan Becker, M.D., Ph.D. | Director | May 4, 2021 |
| /s/ Derek DiRocco, Ph.D.<br>Derek DiRocco, Ph.D. | Director | May 4, 2021 |

| Signature | Title | Date |
|---|---|---|
| /s/ Michael Gladstone<br>Michael Gladstone | Director | May 4, 2021 |
| /s/ Natalie Holles<br>Natalie Holles | Lead Independent Director | May 4, 2021 |
| /s/ John A. Josey, Ph.D., M.B.A.<br>John A. Josey, Ph.D., M.B.A. | Director | May 4, 2021 |
| /s/ Saira Ramasastry, M.S., M.Phil.<br>Saira Ramasastry, M.S., M.Phil. | Director | May 4, 2021 |

# PLAN OF CONVERSION

**Converting**
**Day One Biopharmaceuticals Holding Company, LLC**
**(a Delaware limited liability company)**
**into**
**Day One Biopharmaceuticals, Inc.**
**(a Delaware corporation)**

**THIS PLAN OF CONVERSION** (this "Plan"), dated as of [_____], 2021, is hereby adopted and approved by Day One Biopharmaceuticals Holding Company, LLC, a Delaware limited liability company (the "LLC"), in order to set forth the terms, conditions and procedures governing the conversion of the LLC into a Delaware corporation pursuant to Section 18-216 of the Delaware Limited Liability Company Act (as amended, the "LLC Act") and Section 265 of the Delaware General Corporation Law (as amended, the "DGCL").

**WHEREAS**, the LLC is a limited liability company formed and existing under the laws of the State of Delaware and is operating under the Amended and Restated Operating Agreement dated as of February 1, 2021, as amended (the "LLC Agreement"), by and among the LLC and the Members (as defined in the LLC Agreement, the "Members");

**WHEREAS**, the Board of Managers (as defined in the LLC Agreement, the "Board") and the Members have determined that it is in the best interests of the LLC for the LLC to convert into a Delaware corporation pursuant to Section 18-216 of the LLC Act and Section 265 of the DGCL upon the terms and conditions and in accordance with the procedures set forth herein, and the Board and the Members have authorized and approved the Conversion (as defined below) and the execution, delivery and filing of any and all instruments, certificates and documents necessary or desirable in connection therewith;

**WHEREAS**, the Conversion is intended to facilitate the initial public offering of Common Stock (as defined below) (the "Initial Public Offering") pursuant to the registration statement on Form S-1 (the "Registration Statement") filed by the LLC with the Securities and Exchange Commission; and

**WHEREAS**, pursuant to Sections 4.04(g) and 12.04 of the LLC Agreement, upon the approval of the Board and the Required Holders (as defined therein), the Board shall have authority to convert the LLC into a corporation.

**NOW, THEREFORE**, the LLC does hereby adopt this Plan to effectuate the conversion of the LLC into a Delaware corporation as follows:

1. **Conversion; Effect of Conversion**. Upon and subject to the terms and conditions of this Plan and pursuant to the relevant provisions of the LLC Act and the DGCL, including, without limitation, Section 18-216 of the LLC Act and Section 265 of the DGCL, respectively, the LLC shall convert (referred to herein as the "Conversion") into a Delaware corporation named "Day One Biopharmaceuticals, Inc." (referred to herein as the "Corporation") at the Effective Time (as defined below). The Corporation shall thereafter be subject to all of the provisions of the DGCL, except that notwithstanding Section 106 of the DGCL, the existence of the Corporation shall be deemed to have commenced on the date the LLC commenced (or is deemed to have commenced) its existence. The Conversion shall not affect any obligations or liabilities of the LLC incurred prior to the Effective Time. The LLC shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the Conversion shall not be deemed to constitute a dissolution of the LLC and shall constitute a continuation of the existence of the LLC in the form of a Delaware corporation. Upon the Effective Time, all of the rights, privileges and powers of the LLC, and all property and all debts due to the LLC, as well as all other things and causes of action belonging to the LLC, shall be vested in the Corporation and shall thereafter be the property of the Corporation as they were of the LLC, and all rights of creditors and all liens upon any property of the LLC shall be preserved unimpaired, and all debts, liabilities and duties of the LLC shall thereafter attach to the Corporation and may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it.

2. **Certificate of Conversion; Certificate of Incorporation; Effective Time**. Upon approval of the Board and the Requisite Holders, this Plan and the Conversion shall be effected by the filing with the Secretary of State of Delaware of: (a) a duly executed Certificate of Conversion, substantially in the form of Exhibit A attached hereto (the "Certificate of Conversion"), and (b) a duly executed Certificate of Incorporation of the Corporation, in the form of Exhibit B attached hereto (the "Certificate of Incorporation"). Subject to the foregoing, the Conversion shall be effective immediately upon the filing of (i) the Certificate of Conversion and (ii) the Certificate of Incorporation with the Secretary of State of the State of Delaware (such time of effectiveness, the "Effective Time"), which time shall occur prior to the effectiveness of the Registration Statement.

3. **Termination of LLC Agreement**; **Bylaws and Rights Agreement of the Corporation.** From and after the Effective Time, the LLC Agreement shall terminate and no longer govern the affairs of the Corporation, but instead the affairs of the Corporation shall be conducted under the Bylaws of the Corporation, substantially in the form of Exhibit C attached hereto (the "Bylaws"), and the Certificate of Incorporation. Notwithstanding the foregoing, Section 4.02 and Article XI of the LLC Agreement shall survive the Conversion and the Effective Time and shall continue apply to the Corporation in all respects, *mutatis mutandis*, but shall terminate and expire immediately prior to the closing of the Initial Public Offering. Notwithstanding the foregoing, that certain Amended and Restated Investors' Rights Agreement, dated as of February 1, 2021, by and among the Corporation and certain members thereto, shall survive the Conversion and the Effective Time and shall continue apply to the Corporation in all respects, *mutatis mutandis*.

4. **Directors and Officers**. The directors and officers of the Corporation immediately after the Effective Time shall be those individuals who are set forth on Exhibit D attached hereto. The LLC and, after the Effective Time, the Corporation and its Board of Directors shall take such actions to cause each of such individuals to be appointed as a director and/or officer, as the case may be, of the Corporation.

5. **Effect of the Conversion on the Outstanding Securities of the LLC.**

(a) Conversion of Outstanding Securities. All of the securities of the LLC outstanding as of immediately prior to the Effective Time shall, as of the Effective Time, by virtue of the Conversion and without any action on the part of any shareholder, be canceled and extinguished and converted into the right to receive common stock, par value $[___] per share, of the Corporation ("Common Stock"), or Preferred Stock (as defined below), as specified in this Section 5. Upon issuance pursuant to the Conversion, all shares of Common Stock and Preferred Stock will be duly authorized, validly issued, fully paid and non-assessable. Subject to the terms and conditions of this Plan, at the Effective Time, automatically by virtue of the Conversion and without any further action on the part of the LLC, the Corporation or any holder of Shares (as defined in the LLC Agreement, the "Shares"):

(i) each outstanding Common Share (as defined in the LLC Agreement) immediately prior to the Effective Time shall, by reason of the Conversion, be converted into [one] share of Common Stock;

(ii) each outstanding Series A Convertible Preferred Share (as defined in the LLC Agreement) immediately prior to the Effective Time shall, by reason of the Conversion, be converted into [one] share of Series A Preferred Stock, par value $[___] per share, of the Corporation (the "Series A Preferred Stock");

(iv) each outstanding Series B Convertible Preferred Share (as defined in the LLC Agreement) immediately prior to the Effective Time shall, by reason of the Conversion, be converted into [one] share of Series B Preferred Stock, par value $[___] per share, of the Corporation (the "Series B Preferred Stock" and, together with the Series A Preferred Stock, the "Preferred Stock"); and

(v) each outstanding Incentive Share (as defined in the LLC Agreement) immediately prior to the Effective Time shall, by reason of the Conversion, be converted into that number of shares of Common Stock based upon the number of Common Shares the holder thereof would receive (based upon the valuation of the LLC as determined by the pricing

committee of the Board for purposes of the Initial Public Offering expected to occur on the date of the Conversion) (the "Price")), rounded down to the nearest whole share of Common Stock, assuming that the LLC concurrently distributed Common Shares with an aggregate value equal to the LLC's equity value (determined with reference to the Price) in accordance with the terms and conditions of the LLC Agreement. To the extent that any Incentive Share converted into Common Stock pursuant to the foregoing sentence was subject to vesting, such Common Stock shall be subject to the same vesting conditions as were applicable to the Incentive Share prior to the conversion.

(vi) the Company's [Equity Incentive Plan] will be terminated immediately prior to the Effective Time and the Company will adopt, effective immediately prior to the Effective Time, a new [Equity Incentive Plan] and [Employee Stock Purchase Plan] as set forth on Exhibit E and Exhibit F, respectively.

(b) Issuance of Stock Certificates. If the shares of Preferred Stock and Common Stock of the Corporation are to be certificated, then, promptly following the Effective Time, the Corporation shall deliver to each record holder of Preferred Stock and Common Stock a certificate (which may be in electronic form) representing that number of shares of Series A Preferred Stock, Series B Preferred Stock and Common Stock, as applicable, into which his, her or its Shares were converted pursuant to the Conversion and the provisions of this Section 5. Each certificate, instrument or book entry representing shares of Common Stock and Preferred Stock shall be notated with a legend in substantially the following form (in addition to any legend required under applicable state securities laws):

THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL SUCH SHARES ARE REGISTERED UNDER SUCH ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY IS OBTAINED TO THE EFFECT THAT SUCH REGISTRATION IS NOT REQUIRED.

Such restrictive legend shall be removed in connection with (i) any transfer to the public in accordance with the provisions of Rule 144 (or any other rule permitting public sale without registration under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (the "1933 Act")); (ii) any transfer pursuant to an effective registration statement under the 1933 Act; or (iii) any transfer in connection with which the transferring stockholder delivers to the Corporation an opinion of counsel reasonably acceptable to the Corporation to the effect that the transferee would be entitled to transfer such securities in a public sale without registration under the 1933 Act.

(c) Termination of Incentive Share Plan. Effective as of immediately prior to the Conversion, the Corporation's Incentive Share Plan shall be terminated and no further awards shall be granted thereunder.

(d) No Further Ownership Rights in the Shares. All shares of Preferred Stock and Common Stock issued in exchange for Shares pursuant to the Conversion in accordance with the terms of this Section 5 shall be deemed to have been issued in full satisfaction of all rights pertaining to such Shares. Immediately following the Effective Time, Shares shall no longer be outstanding and shall automatically be canceled and retired and shall cease to exist, and the holder of any Shares immediately prior to the Effective Time shall cease to have any rights with respect thereto. Notwithstanding the foregoing, the vesting schedule and other restrictions applicable to Incentive Shares issued pursuant to an Award Agreement (as defined in the LLC Agreement) prior to the Effective Time shall continue to apply to shares of Common Stock issued in exchange for such Incentive Shares following the Effective Time (except, in the case of certain employees, any restrictions relating to continued employment), and each holder of Incentive Shares shall enter into a Restricted Stock Agreement that reflects such vesting schedule and restrictions.

(e) Transfer Books. At the Effective Time, there shall be no further registration of transfers on the transfer books of the LLC of any Shares that were outstanding immediately prior to the Effective Time.

(f) Fractional Shares. The Corporation shall not issue fractional shares with respect to the Conversion. Any fractional share of Common Stock that would otherwise be issued as a result of the Conversion will be rounded down to the nearest whole share of Common Stock.

(g) Structure. The Conversion has been structured to be treated, for U.S. federal income tax purposes, as a transaction and an exchange described in Section 351 of the Internal Revenue Code of 1986, as amended, in accordance with and as described in Revenue Ruling 2004-59, 2004-24 I.R.B. 1050, issued by the United States Internal Revenue Service.

6. **Millenium Exchange**. Reference is made to that certain Share Exchange Agreement, dated as of [ ] (the "Exchange Agreement"), by and among the Corporation, DOT-1 Therapeutics, Inc., and Millennium Pharmaceuticals, Inc. ("Millennium"). Immediately upon the Effective Time, the Share Exchange (as defined in the Exchange Agreement) shall occur, and the Replacement Shares (as defined in the Exchange Agreement) shall be issued to Millennium, in each case pursuant to and subject to the satisfaction of the terms and conditions of the Exchange Agreement.

7. **Approvals**. On or prior to the date hereof, the Board has approved this Plan through execution and delivery of a Unanimous Written Consent of the Board and the Requisite Holders have approved this Plan through delivery of a Written Consent of Members.

8. **Licenses, Permits, Titled Property, Etc**. If and when applicable, following the Effective Time, the Corporation shall apply for new state tax identification numbers, qualifications to conduct business (including as a foreign corporation), licenses, permits and similar authorizations on its behalf and in its own name in connection with the Conversion and to reflect the fact that it is a corporation. As required or appropriate, following the Effective Time, all real, personal and intangible property of the LLC which was titled or registered in the name of the LLC shall be re-titled or re-registered, as applicable, in the name of the Corporation by appropriate filings and/or notices to the appropriate parties (including, without limitation, any applicable governmental agencies). In addition, following the Effective Time, the LLC's customer, vendor and other communications (e.g., business cards, letterhead, websites, etc.) shall be revised to reflect the Conversion and the Corporation's corporate status.

9. **Further Assurances**. If, at any time after the Effective Time, the Corporation shall determine or be advised that any deeds, bills of sale, assignments, agreements, documents or assurances or any other acts or things are necessary, desirable or proper, consistent with the terms of this Plan, (a) to vest, perfect or confirm, of record or otherwise, in the Corporation its right, title or interest in, to or under any of the rights, privileges, immunities, powers, purposes, franchises, properties or assets of the LLC, or (b) to otherwise carry out the purposes of this Plan, the Corporation and its proper officers and directors (or their designees) are hereby authorized to solicit in the name of the LLC any third-party consents or other documents required to be delivered by any third party, to execute and deliver, in the name and on behalf of the LLC, all such deeds, bills of sale, assignments, agreements, documents and assurances and do, in the name and on behalf of the LLC, all such other acts and things necessary, desirable or proper to vest, perfect or confirm its right, title or interest in, to or under any of the rights, privileges, immunities, powers, purposes, franchises, properties or assets of the LLC and otherwise to carry out the purposes of this Plan.

10. **Implementation and Interpretation; Termination and Amendment**. This Plan shall be implemented and interpreted, prior to the Effective Time, by the Board and, following the Effective Time, by the Board of Directors of the Corporation, (a) each of which shall have full power and authority to delegate and assign any matters covered hereunder to any other party(ies), including, without limitation, any managers or officers of the LLC or any officers of the Corporation, as the case may be, and (b) the interpretations and decisions of which shall be final, binding, and conclusive on all parties. The Board, the Members or the Board of Directors of the Corporation, as applicable, at any time and from time to time, may terminate, amend or modify this Plan.

The Conversion may be abandoned at any time prior to the Effective Time by the Corporation upon approval of the Board. If the closing of the Initial Public Offering does not occur within fifteen (15) days after the effectiveness of the Registration Statement (the "Closing Period"), then, unless the holders of (i) a majority of the Common Stock and the Preferred Stock and (ii) a majority of the Preferred Stock, in each case, issued upon the conversion of the Shares pursuant to Section 5(a) of this Plan and voting together as a single class on an as-converted basis elect otherwise, the Board of Directors of the Corporation shall take, as promptly as practicable after the expiration of the Closing Period, all necessary action to rescind the Conversion to the fullest extent permitted by applicable law causing the Corporation to convert back to a limited liability company and reinstate the LLC Agreement and all of the relative equity interests and other rights, preferences and privileges of all parties thereunder as existed immediately prior to the Effective Time.

10. **Third-Party Beneficiaries**. This Plan shall not confer any rights or remedies upon any person or entity other than as expressly provided herein.

11. **Severability**. Whenever possible, each provision of this Plan will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Plan is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Plan.

12. **Governing Law**. This Plan shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the conflict of laws provisions thereof.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the LLC has caused this Plan to be executed by its duly authorized representative as of the date first stated above.

**DAY ONE BIOPHARMACEUTICALS HOLDING COMPANY, LLC**

By: _____
Jeremy Bender
Chief Executive Officer

**Exhibit A**

**Certificate of Conversion**

**CERTIFICATE OF CONVERSION**
**FROM A LIMITED LIABILITY COMPANY TO**
**A CORPORATION PURSUANT TO**
**SECTION 265 OF THE DELAWARE**
**GENERAL CORPORATION LAW**

1. The jurisdiction where the limited liability company was first formed, and its jurisdiction immediately prior to filing this Certificate of Conversion, is the State of Delaware.

2. The date on which the limited liability company was first formed is November 1, 2018.

3. The name of the limited liability company immediately prior to the filing of this Certificate of Conversion is Day One Biopharmaceuticals Holding Company, LLC.

4. The name of the corporation as set forth in its Certificate of Incorporation is Day One Biopharmaceuticals, Inc.

IN WITNESS WHEREOF, the undersigned being duly authorized to sign on behalf of the converting limited liability company has executed this Certificate of Conversion on the __ day of _____, 2021.

By: _____
Name: Jeremy Bender
Title: Chief Executive Officer

**Exhibit B**

**Certificate of Incorporation**

Certificate of Incorporation in the form filed with the Registration Statement

**Exhibit C**

**Bylaws**

Bylaws in the form filed with the Registration Statement

**Exhibit D**

**Board of Directors of the Corporation**

Jeremy Bender, Ph.D., M.B.A.
Julie Grant, M.B.A.
Dan Becker, M.D., Ph.D.
Derek DiRocco, Ph.D.
Michael Gladstone
Natalie Holles
John A. Josey, Ph.D.
Saira Ramasastry

**Officers of the Corporation**

Jeremy Bender, Ph.D., M.B.A., Chief Executive Officer and President
Charles N. York II, Chief Operating Officer and Chief Financial Officer
Samuel Blackman, M.D., Ph.D., Chief Medical Officer, Co-Founder and Secretary

**Exhibit E**

**[Equity Incentive Plan]**

**Exhibit F**

**[Employee Stock Purchase Plan]**

**EXHIBIT 3.1**

***Execution Version***

**DAY ONE BIOPHARMACEUTICALS HOLDING COMPANY, LLC**

**AMENDED AND RESTATED OPERATING AGREEMENT**

**DATED AS OF FEBRUARY 1, 2021**

**A LIMITED LIABILITY COMPANY ORGANIZED UNDER THE DELAWARE LIMITED LIABILITY COMPANY ACT**

THE SECURITIES PROVIDED FOR HEREIN HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), NOR UNDER THE SECURITIES LAWS OF ANY OTHER JURISDICTION, AND, EXCEPT AS PROVIDED IN THE INVESTORS' RIGHTS AGREEMENT, THE COMPANY IS UNDER NO OBLIGATION TO REGISTER THE SECURITIES UNDER THE SECURITIES ACT OR ANY OTHER SUCH LAWS IN THE FUTURE.

THE SECURITIES PROVIDED FOR HEREIN MAY NOT BE SOLD, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION UNDER THE SECURITIES ACT AND ANY OTHER APPLICABLE LAWS OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED. HEDGING TRANSACTIONS INVOLVING THESE SECURITIES MAY NOT BE CONDUCTED UNLESS IN COMPLIANCE WITH THE SECURITIES ACT AND OTHER APPLICABLE LAWS. ADDITIONAL RESTRICTIONS ON THE TRANSFER OF THESE SECURITIES ARE CONTAINED IN ARTICLE XI OF THIS AGREEMENT. BASED UPON THE FOREGOING, EACH ACQUIROR OF SECURITIES MUST BE PREPARED TO BEAR THE ECONOMIC RISK OF INVESTMENT THEREIN FOR AN INDEFINITE PERIOD OF TIME.

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Schedule A – Members

**DAY ONE BIOPHARMACEUTICALS HOLDING COMPANY, LLC**
**AMENDED AND RESTATED OPERATING AGREEMENT**

This Amended and Restated Operating Agreement, dated as of February 1, 2021 (this "***Agreement***"), is by and among Day One Biopharmaceuticals Holding Company, LLC, a Delaware limited liability company (the "***LLC***") and the persons identified as the Members on Schedule A attached hereto (such persons and their respective successors and permitted assigns being hereinafter referred to individually as a "***Member***" or collectively as the "***Members***"), as such Schedule A may hereinafter be amended.

## RECITALS

**WHEREAS**, the LLC was formed on November 1, 2018 as a limited liability company under and pursuant to the Act (as defined below) as Hero Therapeutics Holding Company, LLC;

**WHEREAS**, the LLC and certain of the Members entered into that certain Amended and Restated Operating Agreement, dated as of December 16, 2019 (as amended, the "***Prior Agreement***");

**WHEREAS**, pursuant to Section 13.05 of the Prior Agreement, the Prior Agreement may be amended by a written instrument signed by the LLC and the (as defined in the Prior Agreement) Preferred Members (as defined in the Prior Agreement) holding at least sixty percent (60%) of the then-outstanding Preferred Shares (the "***Existing Members***"); and

**WHEREAS**, the Existing Members desire to amend and restate the Prior Agreement in its entirety to, among other things, authorize Series B Convertible Preferred Shares (as defined below) of the LLC and establish the rights, preferences, powers and privileges of the Series B Convertible Preferred Shares.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants expressed herein, the parties hereto hereby agree as follows:

## ARTICLE I. Organization and Powers

1.01 Organization

The LLC has been formed by the filing of its Certificate of Formation (as amended from time to time, the "***Certificate of Formation***") with the Delaware Secretary of State pursuant to the Delaware Limited Liability Company Act (as amended from time to time, the "***Act***"). The rights and obligations of the LLC and the Members shall be provided in the Act, the Certificate of Formation and this Agreement. Additional rights and obligations of the LLC and the Preferred Members (as defined below) shall be provided in that certain Amended and Restated Investors' Rights Agreement, dated of even date herewith, by and among the LLC and the Preferred Members (the "***Rights Agreement***").

1.02 Purposes and Powers

Unless the Board of Managers of the LLC (the "***Board***") otherwise determines, the LLC shall have authority to engage in any lawful business, purpose or activity permitted by the Act, and it shall possess and may exercise all of the powers and privileges granted by the Act, so far as such powers or privileges are necessary or convenient to the conduct, promotion or attainment of the business purposes or activities of the LLC. The principal purpose of the LLC is to hold equity interests in operating subsidiaries and to manage and dispose of such equity interests. The LLC (a) shall use reasonable best efforts to conduct its affairs in a manner that does not cause any Member (or beneficial owner thereof) to realize any "unrelated business taxable income" (as that term is defined in Sections 512 through 514 of the Internal Revenue Code of 1986, as amended (the "***Code***")) or any item of gross income that would be included in determining such Member's unrelated business taxable income, (b) shall not engage in, or invest in any person that is treated as a flow-through entity for U.S. federal income tax purposes that engages in, (i) any "commercial activity" as defined in Section 892(a)(2)(i) of the Code, or (ii) a "trade or business within the United States" as defined in Section 864(b) of the Code, and (c) shall not make any investment that is a "U.S. real property interest," within the meaning of Section 897 of the Code.

1.03 Term

The term of the LLC began upon the acceptance of the Certificate of Formation by the Delaware Secretary of State and shall continue in existence in perpetuity unless its existence is sooner terminated pursuant to the Act and this Agreement.

1.04 Registered Office and Registered Agent

The initial registered office of the LLC in the State of Delaware shall be located at 251 Little Falls Drive, in the City of Wilmington, County of New Castle, Delaware 19808 and the name of the LLC's initial registered agent in the State of Delaware at such address shall be Corporation Service Company. The Board may change the registered office or registered agent at any time by filing the address of the new registered office and/or the name of the new registered agent with the Delaware Secretary of State pursuant to the Act.

1.05 Principal Place of Business

The initial principal office and place of business of the LLC shall be 395 Oyster Point Blvd., Suite 217, South San Francisco, CA 94080. The Board may change the principal office or place of business of the LLC at any time and may cause the LLC to establish other offices or places of business.

1.06 Fiscal Year

Except as otherwise provided by the Code, the fiscal year of the LLC shall end on December 31st in each year or such other date as the Board may determine from time to time.

1.07 Qualification in Other Jurisdictions

The Board shall cause the LLC to be qualified or registered under applicable laws of any jurisdiction in which the LLC transacts business and shall be authorized to execute, deliver and file any certificates and documents necessary to effect such qualification or registration including, without limitation, the appointment of agents for service of process in such jurisdictions.

1.08 Partnership Classification

It is the intention of the parties hereto that the LLC be treated as a partnership for federal income tax purposes as defined in Section 7701 of the Code. Except as provided in Section 12.04, neither the LLC nor any Member shall file any tax election, or knowingly take (or knowingly cause or permit any of its Affiliates to take) any other action, that is inconsistent with the treatment of the LLC as a partnership for federal income tax purposes.

1.09 Designation of Partnership Representative

Jeremy Bender (or such other person as shall be selected by the Board) is hereby designated as the "partnership representative" (the "***Partnership Representative***") as provided in Code Section 6223(a) (as amended by the Bipartisan Budget Act of 2015 ("***BBA***")). The Partnership Representative is specifically directed and authorized to take whatever steps he, she or it, in his, her or its sole discretion, deems necessary or desirable to perfect such designation including, without limitation, filing any forms or documents with the Internal Revenue Service and taking such other action as may from time to time be required under Treasury Regulations. The Board may, in its discretion, change the Partnership Representative at any time and from time to time. The Partnership Representative shall act at the direction of the Board. The Board shall determine whether the LLC (either on its own behalf or on behalf of the Members) will contest or continue to contest any tax deficiencies assessed or proposed to be assessed by the Internal Revenue Service or any other taxing authority. The Partnership Representative shall manage administrative tax proceedings conducted at the LLC level by the Internal Revenue Service with respect to LLC matters, and shall deal with the Internal Revenue Service on any audits that are subject to the partnership audit provisions of the BBA. Each Member agrees that such Member will not independently act with respect to tax audits or tax litigation of the LLC unless previously authorized to do so in writing by the Partnership Representative, which authorization may be withheld by the Partnership Representative, at the direction of the Board. Members shall be bound by the actions taken by the Partnership Representative in accordance with this section. The LLC shall use commercially reasonable efforts to minimize the likelihood that any Member would bear any material tax, interest or penalties as a result of any audit or proceeding that is attributable to another Member (other than a predecessor in interest). Expenses of administrative proceedings relating to the determination of LLC items at the LLC level undertaken by the Partnership Representative shall be LLC expenses. Without limiting the generality of the foregoing, at the direction of the Board, the Partnership Representative shall have the sole and exclusive authority to make any elections on behalf of the LLC permitted to be made pursuant to Section 754 or any other section of the Code or the regulations promulgated thereunder. In the event of an audit of the LLC that is subject to the partnership audit procedures enacted under Section 1101 of the BBA (the "***BBA Procedures***"), at the direction of the Board,

the Partnership Representative shall have the right to make any and all elections and to take any actions that are available to be made or taken by the Partnership Representative or the LLC under the BBA Procedures. If an election under Code Section 6226(a) (as amended by the BBA) is made, the LLC shall furnish to each Member for the year under audit a statement of the Member's share of any adjustment set forth in the notice of final partnership adjustment, and each Member shall take such adjustment into account as required under Code Section 6226(b) (as amended by the BBA). The Partnership Representative shall, at the LLC's expense, file or cause to be filed all tax returns of the LLC with the appropriate tax authorities.

## ARTICLE II. Members

2.01 Members

(a) The Members and their addresses are listed on Schedule A attached hereto and such Schedule A shall be amended from time to time by the Board to reflect the withdrawal of Members, the admission of additional Members, Transfers of Shares (each as defined below) or the issuance of additional Shares pursuant to (i) this Agreement or (ii) the Series B Preferred Share Purchase Agreement, dated of even date herewith, by and among the LLC and certain of the Preferred Members (the "***Purchase Agreement***"). The Members shall constitute a single class or group of members of the LLC for all purposes of the Act, unless otherwise expressly provided herein. The LLC will, upon written request, provide Members with the most recently amended Schedule A, which shall constitute the record list of the Members for all purposes of this Agreement.

(b) Each Member hereby severally and not jointly represents and warrants to the LLC that (i) such Member has all requisite power and authority to execute, deliver and perform such Member's obligations under this Agreement, (ii) all action on the part of such Member and, as applicable, its directors, officers, managers, members, partners and stockholders, necessary for the authorization, execution, delivery and performance of all obligations of such Member under this Agreement has been taken, (iii) this Agreement constitutes the valid and legally binding obligation of such Member and is enforceable against such Member in accordance with its terms except (A) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally or by equitable principles, (B) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies and (C) to the extent that the enforceability of indemnification provisions may be limited by applicable laws, (iv) such Member understands that the equity interests in the LLC have not been registered under the securities laws of any jurisdiction and cannot be disposed of unless they are subsequently registered and/or qualified under applicable securities laws and the provisions of this Agreement have been complied with, (v) the authorization, execution, delivery and performance of all obligations of such Member under this Agreement do not require such Member to obtain any consent or approval that has not been obtained and do not contravene or result in a default under any provision of any existing law or regulation applicable to such Member, any provision of such Member's charter, by-laws or other governing documents (if applicable) or any agreement or instrument to which such Member is a party or by which such Member is bound, (vi) such Member is the record beneficial owner of the Shares set forth opposite his, her or its name on Schedule A attached hereto and, except as set forth opposite such Member's name on Schedule A attached hereto, such Member does not own or hold any legal or beneficial right, title or interest in

or to any Shares or other securities of the LLC, (vii) such Member has been furnished with such documents, materials and information as he, she or it deems necessary or appropriate for evaluating whether to execute this Agreement, such Member has had the opportunity to ask questions of, and receive answers from, the managers and officers of the LLC, and persons acting on the LLC's behalf, concerning the terms and conditions of the transactions contemplated by this Agreement and (viii) such Member is an "accredited investor" as defined in Regulation D promulgated under the Securities Act of 1933, as amended (the "***Securities Act***"). As used herein, "***Affiliate***" means, with respect to any specified person, any other person who, directly or indirectly, controls, is controlled by, or is under common control with such person, including, without limitation, any general partner, manager, managing member, officer, director or trustee of such person, or any venture capital fund, private investment vehicle or registered investment company now or hereafter existing that is controlled by one or more general partners, managing members, private investment vehicle or investment advisers of, or shares the same management company, ultimate beneficial owner or investment adviser with, such person.

2.02 Admission of New Members

Additional persons may be admitted to the LLC as Members in accordance with the terms of this Agreement, the Purchase Agreement, and upon such other terms as are established by the Board. New Members shall be admitted in accordance with the terms of this Agreement, the Purchase Agreement, and at the time when all conditions to their admission have been satisfied, as determined by the Board, and their identity, Shares and Contributions (if any) under Section 8.02 have been established by amendment of Schedule A attached hereto.

2.03 Meetings of Members

(a) Notice of Meetings. Regular meetings of Members shall not be held; however, special meetings of Members shall be held at such times as the Members, individually or collectively, owning twenty-five percent (25%) or more of the aggregate number of the then outstanding Common Shares and Preferred Shares (calculated on an as-converted to Common Share basis) ((i) and (ii) collectively, the "***Capital Shares***"), or at such time as the Board may request. A written notice stating the place, date and hour of all meetings of Members shall be given by the Secretary (or other person authorized by the Board) not less than five (5) nor more than sixty (60) days before the meeting to each Member entitled to vote thereat and to each Member who, under this Agreement, is entitled to such notice by delivering such notice to such Member in accordance with Section 13.02. Notice need not be given to a Member if a written waiver of notice is executed before or after the meeting by such Member or if such Member attends the meeting in question, unless such attendance was for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened.

(b) Quorum. The Members holding a majority (on an as-converted to Common Share basis) of the Capital Shares then outstanding and entitled to vote at a meeting shall constitute a quorum; *provided*, *however*, that if the vote of a separate class and/or a larger vote of Shares is required by this Agreement or otherwise, then the Members holding a majority of such Shares constituting such separate class or such vote of a larger number of such Shares, as the case may be, that are outstanding shall constitute a quorum for such purpose. Any meeting may be adjourned from time to time by the holders of a majority of the votes properly cast upon the question, whether or not a quorum is present.

(c) Voting and Proxies. Members may vote either in person or by written proxy, but no proxy shall be voted or acted upon after ten (10) years from its date, unless the proxy provides for a longer period. Proxies shall be filed with the Secretary of the meeting, or of any adjournment thereof. Except as otherwise limited therein, proxies shall entitle the persons authorized thereby to vote at any adjournment of such meeting. A proxy purporting to be executed by or on behalf of a Member shall be deemed valid unless challenged at or prior to its exercise and the burden of proving invalidity shall rest on the challenger.

(d) Action at Meeting. When a quorum is present, any matter before the meeting shall be decided by vote of the Members holding a majority (on an as-converted to Common Share basis) of the Capital Shares voting on such matter except where a larger vote or separate class vote is required by law or by this Agreement. The LLC shall not vote any of its own Shares.

(e) Action without a Meeting. Any action required or permitted by law to be taken at any meeting of Members may be taken without a meeting and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding Capital Shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all outstanding Capital Shares were present and voted. Prompt written notice of the taking of the action without a meeting by less than unanimous written consent shall be given to those holders of outstanding Capital Shares who have not consented in writing.

(f) Conference Communications. Members may participate in meetings of Members by means of conference telephone or similar communications equipment by means of which all Members participating in the meeting can hear each other, and participation in a meeting in accordance herewith shall constitute presence in person at such meeting.

2.04 Voting Rights

(a) Common Shares. Unless otherwise required by the Act or this Agreement, on any matter presented to the Members for their action or consideration at any meeting of the Members (or written actions in lieu of meetings), the holders of outstanding Common Shares (each, a "***Common Member***") are entitled to one vote for each Common Share owned by them of record according to the books of the LLC. There shall be no cumulative voting.

(b) Preferred Shares. Unless otherwise required by the Act or this Agreement, on any matter presented to the Members for their action or consideration at any meeting of the Members (or written actions in lieu of meetings), the holders of outstanding Preferred Shares (each, a "***Preferred Member***") are entitled to cast the number of votes equal to the number of whole Common Shares into which the Preferred Shares owned by such Preferred Member of record according to the books of the LLC are convertible as of the record date for determining Members entitled to vote on such matter. Except as provided by law or by the other provisions of this Agreement, Preferred Members shall vote together with the Common Members as a single class and on an as-converted to Common Share basis. There shall be no cumulative voting. The Common Shares and Preferred Shares are sometimes referred to herein as "***Voting Shares***."

(c) Incentive Shares. Unless otherwise required by the Act or this Agreement, no Incentive Member (as defined below) shall be entitled to any voting, consent or approval rights with respect to the Incentive Shares (as defined below) held by such Incentive Member.

(d) Election of Directors. Subject to Article IV below, (i) the holders of Series A Convertible Preferred Shares, exclusively and as a separate class, shall be entitled to elect three (3) Managers (as defined below) of the LLC (collectively, the "***Series A Managers***"), (ii) the holders of Series B Convertible Preferred Shares, exclusively and as a separate class, shall be entitled to elect one (1) Manager of the LLC (the "***Series B Manager***" and, together with the Series A Managers, the "***Preferred Managers***"), (iii) the Common Members, exclusively and as a separate class, shall be entitled to elect one (1) Manager of the LLC (the "***Common Manager***") and (iv) the Common Members and Preferred Members, exclusively and voting together as a single class on an as-converted to Common Share basis, shall be entitled to elect the balance of the total number of Managers of the LLC. At any meeting held for the purpose of electing a Manager, the presence in person or by proxy of the holders of a majority of the outstanding Shares of the class or series entitled to elect such Manager shall constitute a quorum for the purpose of electing such Manager. Except as otherwise provided in this Agreement, a vacancy of any Manager position filled by the Members of any class or series shall be filled only by vote or written consent in lieu of a meeting of the Members of such class or series or by any remaining Manager or Managers elected by the Members of such class or series pursuant to this Section 2.04(d).

2.05 Preferred Shares Protective Provisions

At any time when any Preferred Shares are outstanding, the LLC shall not, and shall not permit any of its subsidiaries to, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by the Act or this Agreement) the written consent or affirmative vote of Preferred Members holding at least sixty percent (60%) of the then-outstanding Preferred Shares, which shall include the written consent or affirmative vote of at least one Preferred Member who is a holder of solely Series B Convertible Preferred Shares (which, for clarification, shall exclude any Preferred Member holding any Series A Convertible Preferred Shares) (the "***Required Holders***") given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect:

(a) create, or authorize the creation of, or issue or obligate itself to issue shares of, any class or series of capital shares unless the same ranks junior to the Preferred Shares with respect to the distribution of assets on the liquidation, dissolution or winding up of the LLC, the payment of distributions and rights of redemption;

(b) (i) reclassify, alter or amend any existing security of the LLC that is pari passu with the Preferred Shares in respect of the distribution of assets on the liquidation, dissolution or winding up of the LLC, the payment of distributions or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Preferred

Shares in respect of any such right, preference, or privilege or (ii) reclassify, alter or amend any existing security of the LLC that is junior to the Preferred Shares in respect of the distribution of assets on the liquidation, dissolution or winding up of the LLC, the payment of distributions or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to or pari passu with the Preferred Shares in respect of any such right, preference or privilege;

(c) set aside or make any distribution in respect of, or redeem (or permit any subsidiary to redeem), or purchase or otherwise acquire any of, (or pay into or set aside for a sinking fund for such purpose) the Shares or other equity securities; provided, however, that this restriction shall not apply to (i) distributions payable on the Common Shares solely in the form of additional Common Shares, (ii) the repurchase of Common Shares or Incentive Shares from managers, directors, officers, employees, advisors, consultants or other persons performing services for the LLC or any subsidiary of the LLC upon termination of such person's employment or other relationship with the LLC at no greater than the original purchase price or (iii) distributions of cash in accordance with Section 10.03;

(d) cause any subsidiary to pay or declare any dividend or make any distribution on any shares of capital stock of such subsidiary (unless the same is approved by the Board, which approval must include the affirmative vote, consent or approval of at least two of the Preferred Managers);

(e) effect any merger, consolidation, reclassification, liquidation, dissolution, winding-up, recapitalization, or reorganization or sale or exclusive license of all or substantially all of its assets;

(f) amend, alter, repeal or waive any provision of this Agreement or the Certificate of Formation;

(g) increase the number of authorized Preferred Shares, Common Shares or Incentive Shares;

(h) acquire any new preclinical or clinical development program/compound or an equity interest in any entity that is not a wholly owned subsidiary of the LLC (unless the same is approved by the Board, which approval must include the affirmative vote, consent or approval of at least two of the Preferred Managers);

(i) issue any security of any subsidiary other than to the LLC (unless the same is approved by the Board, which approval must include the affirmative vote, consent or approval of at least two of the Preferred Managers); or

(j) incur any indebtedness or issue any guaranty of any third-party obligation in an amount greater than $1,000,000 (unless the same is approved by the Board, which approval must include the affirmative vote, consent or approval of at least two of the Preferred Managers), other than ordinary course trade payables, borrowing between the LLC and its subsidiaries or between the LLC's subsidiaries.

2.06 Record Holders

Except as may otherwise be required by applicable law or by this Agreement, the LLC shall be entitled to treat the record holder of Shares as shown on its books as the owner of such Shares for all purposes, including the payment of distributions and the right to vote with respect thereto, regardless of any transfer, pledge or other disposition of such Shares, until such Shares have been transferred on the books of the LLC in accordance with the requirements of this Article II and in compliance with the transfer restrictions set forth in Article XI of this Agreement. It shall be the duty of each Member to notify the LLC of its address or any change thereof.

2.07 Record Date

In order that the LLC may determine the Members entitled to notice of, or to vote at, any meeting of Members or any adjournment thereof, or to express consent to an action of the LLC in writing without a meeting, or entitled to receive payment of any distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of Shares or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which shall not be more than sixty (60) nor less than five (5) business days before the date of such meeting, nor more than sixty (60) days prior to any other action. In such case only Members of record on such record date shall be so entitled notwithstanding any transfer of Shares on the books of the LLC after the record date. If no record date is fixed, (a) the record date for determining Members entitled to notice of or to vote at a meeting of Members shall be at the close of business on the day preceding the day on which notice is given, or, if notice is waived, at the close of business on the day preceding the day on which the meeting is held, (b) the record date for determining Members entitled to express consent to LLC action in writing without a meeting, when no prior action by the Board is necessary, shall be the day on which the first written consent is expressed and (c) the record date for determining Members for any other purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

2.08 Member Registry

The LLC shall maintain a true and complete registry of the Members including the name and address of each Member, the number and class or series of Shares held by such Member and the Contributions (as defined below) made by such Member.

2.09 Limitation of Liability of Members; Indemnity

Except as otherwise provided in the Act, no Member, solely in his, her or its capacity as a Member, shall be obligated personally for any debt, obligation or liability of the LLC or of any other Member, whether arising in contract, tort or otherwise except for the obligations that such Member has expressly agreed in writing to provide indemnity or has otherwise guaranteed any obligation of the LLC or any subsidiary of the LLC. No Member, solely in his, her or its capacity as a Member, shall have any duty to the LLC, any other Member or any other person under this Agreement, applicable law or otherwise except for the obligations that such Member has expressly agreed in writing to provide indemnity or has otherwise guaranteed any obligation of the LLC or any subsidiary of the LLC and except for the express obligations of such Member set forth in this

Agreement. To the fullest extent permitted by the Act, all fiduciary and other duties of each Member, solely in his, her or its capacity as a Member, to the LLC, any other Member or any other person under this Agreement, applicable law or otherwise, other than the obligations that such Member has expressly agreed in writing to provide indemnity or has otherwise guaranteed any obligation of the LLC or any subsidiary of the LLC and except for the express obligations of such Member set forth in this Agreement, are expressly eliminated and each party hereto hereby agrees that such elimination of such fiduciary and other duties is reasonable. Without limiting the generality of the foregoing, in the event that a Member who is not an employee of the LLC or any subsidiary of the LLC acquires knowledge of a potential transaction or matter that may be a business opportunity for such Member or an Affiliate of such Member, such Member shall not have a duty to communicate or offer such business opportunity to the LLC or be liable to the LLC or its Members or creditors or any other person for breach of any duty as a Member by reason of the fact that such Member pursues or acquires such business opportunity for such Member or an Affiliate, directs such business opportunity to another person, or does not communicate information regarding, or offer, such business opportunity to the LLC. No Member shall have any responsibility to restore any negative or deficit balance in its Capital Account (as defined in Section 8.01) or to contribute to or in respect of the liabilities or obligations of the LLC or to return distributions made by the LLC except as required by the Act or other applicable law. The failure of the LLC to observe any formalities or requirements relating to the exercise of its powers or the management of its business or affairs under this Agreement or the Act shall not be grounds for making its Members or the Managers responsible for the liabilities of the LLC. Except for (a) claims as to which such Member has agreed to provide indemnity or has otherwise guaranteed any obligation of the LLC or any subsidiary of the LLC, (b) the breach of the express obligations of such Member set forth in this Agreement and (c) willful misconduct or fraud by such Member, the LLC shall indemnify, to the fullest extent permitted by the Act as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the LLC to provide broader indemnification rights than the Act permitted the LLC to provide prior to such amendment) any Member who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (whether or not brought by or in the right of the LLC) by reason of the fact that he, she or it is or was a Member, solely in his, her or its capacity as a Member, from and against any claim by any person against such Member acting in his, her or its capacity as a Member for all expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or it in connection with such action, suit or proceeding. The foregoing indemnification rights conferred on any Member by this Section 2.09 shall not be exclusive of any other rights which such Member may have or hereafter acquire under any statute, the Certificate of Formation, this Agreement, other agreement, vote of the Members or the Board or otherwise.

2.10 Authority

Unless expressly authorized by the Board after the date hereof, no Member, solely in his, her or its capacity as a Member, shall be an agent of the LLC or have any right, power or authority to act for or to bind the LLC or to undertake or assume any obligation or responsibility of the LLC or of any other Member.

2.11 No Right to Withdraw

No Member shall have any right to resign or withdraw from the LLC without the consent of the Board unless such Member elects to forfeit his, her or its Shares to the LLC in connection with such resignation and withdrawal; such resignation or withdrawal shall not entitle such Member to receive any distribution from the LLC (including a distribution for the fair value of such Member's Shares) or the repayment of its Contribution. This Section 2.11 shall not affect the rights of a Member otherwise provided for in this Agreement to receive distributions in connection with an actual or deemed liquidation, dissolution or winding up of the LLC.

2.12 Rights to Information

Members shall have the right to receive from the Board, upon request, a copy of the Certificate of Formation and of this Agreement, as amended from time to time, and such other information regarding the LLC as is required by the Act, subject to reasonable conditions and standards established by the Board, as permitted by the Act, which may include, without limitation, withholding, or restrictions on the use and disclosure of, confidential information.

2.13 Tax Information

The LLC will prepare IRS Form 1065 and all income tax returns of the LLC for each year which are required to be filed and will cause such returns to be timely filed. Within ninety (90) days after the end of each fiscal year, the LLC will deliver to each person that was a Member at any time during such year such Member's Schedule K-1 and such additional information in the LLC's possession, if any, with respect to the LLC that is reasonably requested by such Member and is necessary for the preparation of such Member's income tax returns and any tax refunds or exemptions from withholding.

2.14 Confidentiality

Each Member shall keep confidential and will not disclose, divulge, or use for any purpose (other than to monitor its investment in the LLC or to enforce its rights under this Agreement or any other agreement between the Company and the Members ) any confidential information obtained from the LLC or its subsidiaries pursuant to the terms of this Agreement (including notice of the LLC's intention to file a registration statement), unless such confidential information (a) is known or becomes known to the public in general (other than as a result of a breach of this Section 2.14 by such Member), (b) is or has been independently developed or conceived by such Member without use of the LLC's confidential information or (c) is or has been made known or disclosed to such Member by a third party without a breach of any obligation of confidentiality such third party may have to the LLC; *provided*, *however*, that a Member may disclose confidential information (i) to his, her or its attorneys, accountants, consultants, investment managers and other professionals to the extent necessary to obtain their services in connection with monitoring his, her or its investment in the LLC or to enforce its rights under this Agreement or any other agreement between the Company and the Members; (ii) to any prospective purchaser of Shares from such Member, if such prospective purchaser is subject to a confidentiality agreement with such Member or is otherwise bound to keep such information confidential by obligations at least as restrictive as the provisions of this Section

2.14 and provided that such prospective purchase is a Competitor (as defined in the Rights Agreement) of the LLC; (iii) to any regulator, existing or prospective Affiliate, partner, member, stockholder, beneficial owner or wholly owned subsidiary of such Member in the ordinary course of business, provided that, to the extent permitted by applicable law, such Member informs such person that such information is confidential and directs such person to maintain the confidentiality of such information; or (iv) as may otherwise be required by law, regulation, rule, court order or subpoena, provided that, to the extent permitted by applicable law, such Member promptly notifies the LLC of such disclosure and takes reasonable steps to minimize the extent of any such required disclosure. Each party acknowledges that monetary damages calculated at law would not be an adequate remedy for breach of this Section 2.14, and that each party shall be entitled to seek injunctive relief, including injunction and specific performance, or other more appropriate equitable relief (in addition to any other remedy it may have under this Agreement or otherwise at law or in equity) in the event of any breach of this Section 2.14 by the other party.

2.15 Lock-Up Obligation.

Each Member will not, without the prior written consent of the LLC and managing underwriter, during the period commencing on the date of the final prospectus relating to the registration by the LLC for its own behalf of its Common Shares or any other equity securities under the Securities Act and ending on the date specified by the LLC and the managing underwriter (such period not to exceed 180 days): (a) lend; offer; pledge; sell; contract to sell; sell any option or contract to purchase; purchase any option or contract to sell; grant any option, right, or warrant to purchase; or otherwise transfer or dispose of, directly or indirectly, any Common Shares or any securities convertible into or exercisable or exchangeable (directly or indirectly) for Common Shares or (b) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of such securities, whether any such transaction described in clause (a) above is to be settled by delivery of Common Shares or other securities, in cash or otherwise. The foregoing provisions of this Section 2.15: (i) shall apply only to the initial underwritten public offering of Common Shares; (ii) shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement; (iii) shall not apply to the sale of any Shares acquired by the Member following the effectiveness of the registration statement for the initial public offering; (iv) shall not apply to any transfers by a Member that is a corporation, partnership, limited liability company or other business entity, provided that (x) such transfer is to another corporation, partnership, limited liability company or other business entity that controls, is controlled by or is under common control with such Member or as part of a disposition, transfer or distribution without consideration by the undersigned to its equity holders, limited partners or members, (y) no filing under the Exchange Act or other public announcement, reporting an overall reduction in beneficial ownership of Common Shares or any security convertible into or exercisable or exchangeable for Common Shares collectively held by such transferring Member, its Affiliates, or its or their beneficial owners, equity holders, limited partners and/or members, shall be required or shall be voluntarily made during the lock up period (*provided, however*, that the transferring Member shall be permitted to make required filings on a Schedule 13D, Form 13F, or Schedule 13G under the Exchange Act; and *provided further* that any filing under the Exchange Act or other public announcement shall include a footnote noting the circumstances described in this clause) and (z) the transferee agrees, in writing, to be bound by the restrictions set forth herein; and (v) shall be applicable to the Members only if all officers and Managers of

the LLC are subject to the same restrictions and the LLC uses commercially reasonable efforts to obtain a similar agreement from all members individually owning more than one percent (1%) of the LLC's then-outstanding Common Shares. The underwriters in connection with such registration are intended third-party beneficiaries of this Section 2.15 and shall have the right, power, and authority to enforce the provisions hereof as though they were a party hereto. Each Member further agrees to execute such agreement as may be reasonably requested by the underwriters in connection with such registration that are consistent with this Section 2.15 or that are necessary to give further effect thereto; *provided that* in the event of any conflict or inconsistency between the terms of such separate agreement and this Section 2.15, including, without limitation, any provisions regarding permitted transfers in such separate agreement, the terms of such separate agreement shall control. Any discretionary waiver or termination of the restrictions of any or all of such agreements by the LLC or the underwriters shall apply pro rata to all Members subject to such agreements, based on the number of shares subject to such agreements. The LLC may impose stop-transfer instructions with respect to the securities subject to the foregoing restriction until the end of the lock-up period.

## ARTICLE III. Capital Structure

3.01 Classes of Shares

(a) Authorized Shares. Interests of Members in the profits and losses of the LLC and the right of Members to distributions and allocations and a return of capital contributions and other amounts specified herein shall be evidenced by shares of limited liability company interests in the LLC. Initially, there shall be three classes of Shares designated as "***Common Shares***", "***Preferred Shares***" and "***Incentive Shares***". The term "***Shares***" shall mean, collectively, the Common Shares, the Preferred Shares and the Incentive Shares. The LLC has authority to issue (i) 17,000,000 Common Shares, (ii) 13,973,939 Preferred Shares, 9,828,498 of which shall be designated "***Series A Convertible Preferred Shares***" and 4,145,441 of which shall be designated "***Series B Convertible Preferred Shares***" and (iii) 3,838,356 Incentive Shares. The Shares owned by the Members as of the date hereof are set forth on Schedule A.

(b) Incentive Shares. The Incentive Shares shall have the rights and powers set forth in this Section 3.01(b).

(i) The Board shall have the right to issue Incentive Shares to managers, directors, officers, employees, advisors and consultants of the LLC and its subsidiaries (the "***Incentive Members***") pursuant to the LLC's Incentive Share Plan (as amended from time to time, the "***Incentive Plan***") and an Award Agreement entered into by the LLC with such Incentive Member (each, as amended from time to time, an "***Award Agreement***"). The terms of each Award Agreement shall specify the number of Incentive Shares issued to the applicable Incentive Member. The Board shall have the power and discretion to approve which managers, directors, officers, employees, advisors and consultants of the LLC and its subsidiaries shall be offered and issued such Incentive Shares, the number of Incentive Shares to be offered and issued to each such person, the vesting, forfeiture and other restrictions, if any, governing such Incentive Shares, the purchase price therefor, if any, and any such other terms and conditions as it shall deem appropriate. In connection with any approved issuance to any Incentive Member of Incentive Shares hereunder, such Incentive Member shall execute a counterpart to this Agreement, or

otherwise be deemed to have become a party to this Agreement by executing an Award Agreement, accepting and agreeing to be bound by all terms and conditions hereof, and shall enter into such other documents and instruments to effect such issuance (including, without limitation, an Award Agreement) as are required by the Board. Notwithstanding anything to the contrary in this Agreement, except as required by applicable law, no Incentive Member shall be entitled to any voting, consent or approval rights with respect to the Incentive Shares held by such Incentive Member. Each Incentive Member shall be a Member hereunder unless and until such Incentive Member does not hold any Shares (including, without limitation, as a result of the forfeiture of all of the Incentive Shares held by such Incentive Member).

(ii) Unless otherwise approved by the Board, all Incentive Shares shall vest over a four (4) year period, with the first twenty-five percent (25%) of such Incentive Shares vesting following twelve (12) months of continued employment or service, and the remaining Incentive Shares vesting in equal monthly installments over the following thirty-six (36) months. Subject to the preceding sentence, each Incentive Member's Incentive Shares shall vest as set forth in the Incentive Plan and the applicable Award Agreement for such Incentive Shares. "***Unvested Incentive Shares***" means any Incentive Shares that have not vested as of the date of determination pursuant to the Incentive Plan and the applicable Award Agreement. "***Vested Incentive Shares***" means any Incentive Shares that have vested as of the date of determination pursuant to the Incentive Plan and the applicable Award Agreement.

(iii) If an Incentive Member's Continuous Service (as such term is defined in the Incentive Plan) is terminated for any reason, then, unless otherwise set forth in the Award Agreement for any Incentive Member, all of the Unvested Incentive Shares held by such Incentive Member shall immediately be forfeited and revert back to the LLC without any payment to the Incentive Member.

(iv) The LLC and each Member agree to treat each Incentive Member's Incentive Shares (such interest, a "***Profits Interest***") as a separate "Profits Interest" within the meaning of Rev. Proc. 93-27, 1993-2 C.B. 343, and it is the intention of the Members that distributions to each Incentive Member pursuant to Article X be limited to the extent necessary so that the Profits Interest of such Incentive Member qualifies as a "Profits Interest" under Rev. Proc. 93-27, and this Agreement shall be interpreted accordingly. In accordance with Rev. Proc. 2001- 43, 2001-2 C.B. 191, the LLC shall treat a Member holding an Incentive Share as the owner of such Incentive Share from the date it is granted, and shall file its IRS Form 1065, and issue appropriate Schedule K-1s to such Member, allocating to such Member its distributive share of all items of income, gain, loss, deduction and credit associated with such Profits Interest as if it were a fully Vested Incentive Share. Each Incentive Member agrees to take into account such distributive share in computing its income tax liability for the entire period during which it holds the Profits Interest. The LLC and each Member agree not to claim a deduction (as wages, compensation or otherwise) for the fair market value, as determined in good faith by the Board, of such Profits Interest issued to an Incentive Member, either at the time of grant of the Profits Interest or at the time the Profits Interest becomes substantially vested. The undertakings contained in this Section 3.01(b) shall be construed in accordance with Section 4 of Rev. Proc. 2001-43. Each Incentive Member shall be required to file an election pursuant to Section 83(b) of the Code (a "***Section 83(b) Election***") with respect to its Incentive Shares no later than ten days after receipt of such Incentive Shares. The provisions of this Section 3.01(b) shall apply regardless of whether or not an Incentive Member files a Section 83(b) Election with respect to its Incentive Shares.

(v) As of the date of each grant of Incentive Shares to an Incentive Member, the Board shall establish an initial "***Participation Threshold***" amount with respect to each such Incentive Share granted on such date. Unless otherwise determined by the Board, the Participation Threshold with respect to an Incentive Share shall be equal to or greater than the amount that would be distributed with respect to all Shares pursuant to Section 10.04(b) in a hypothetical transaction in which the LLC sold all of its assets for fair market value (as determined in good faith by the Board, which determination shall take into account any factors and using any valuation methodologies that the Board in good faith deems relevant in its sole discretion, including potentially using independent appraisers, industry comparables, internal valuations and any other customary valuation measures), discharged in full all of its outstanding liabilities and distributed the remaining proceeds therefrom in liquidation of the LLC pursuant to Section 10.04(b) (as determined immediately prior to the issuance of such Incentive Share, such that in such hypothetical liquidation of the LLC, no amount would be available for distribution in respect of such Incentive Share as of the issuance of such Incentive Share).

(vi) The Board is hereby authorized and directed to cause the LLC to make an election to value any Shares issued by the LLC as compensation for services to the LLC (collectively, "***Compensatory Interests***") at liquidation value (the "***Safe Harbor Election***"), as the same may be permitted pursuant to or in accordance with the finally promulgated successor rules to Proposed Regulations Section 1.83-3(l) and IRS Notice 2005-43 (collectively, the "***Proposed Rules***"). The Board shall cause the LLC to make any allocations of items of income, gain, deduction, loss or credit (including forfeiture allocations and elections as to allocation periods) necessary or appropriate to effectuate and maintain the Safe Harbor Election.

(vii) Any such Safe Harbor Election shall be binding on the LLC and on all of its Members with respect to all permitted transfers of Compensatory Interests thereafter made by the LLC while a Safe Harbor Election is in effect. A Safe Harbor Election once made may be revoked by the Board as permitted by the Proposed Rules or any applicable rule.

(viii) Each Member (including any person to whom a Compensatory Interest is transferred in connection with the performance of services), by signing this Agreement or by accepting such transfer, hereby agrees to comply with all requirements of the Safe Harbor Election with respect to all Compensatory Interests transferred while the Safe Harbor Election remains effective.

(ix) The Board shall file or cause the LLC to file all returns, reports and other documentation as may be required to perfect and maintain the Safe Harbor Election with respect to transfers of Compensatory Interests covered by such Safe Harbor Election.

(x) Notwithstanding anything to the contrary in this Agreement (including, without limitation, Section 13.05), the Board is hereby authorized and empowered, without further vote or action of the Members, to amend this Agreement as necessary to comply with the Proposed Rules or any similar rule, in order to provide for a Safe Harbor Election and the ability to maintain or revoke the same, and shall have the authority to execute any such amendment

by and on behalf of each Member; provided that such amendment may be made by the Board only to the extent such amendment will not have a material effect on the amounts distributed to any Member pursuant to Section 10.04 hereof upon liquidation or dissolution of the LLC, and the Board shall use its reasonable best efforts to effect as little change in the tax arrangements among the Members as the Board shall determine in its reasonable discretion to be necessary to comply with such Safe Harbor Election. Any undertakings by the Board necessary to enable or preserve a Safe Harbor Election may be reflected in such amendments and to the extent so reflected shall be binding on each Member. Each Member agrees to cooperate with the Board to perfect and maintain any Safe Harbor Election, and to timely execute and deliver any documentation with respect thereto reasonably requested by the Board.

(xi) Without limitation of any other provision herein, no transfer of any Profits Interest in the LLC by a Member, to the extent permitted by this Agreement, shall be effective unless prior to such transfer, the transferee, assignee or intended recipient of such Profits Interest shall have agreed in writing to be bound by the provisions of this Section 3.01(b), in form satisfactory to the Board.

(xii) This Section 3.01(b) together with the Award Agreements pursuant to which the Incentive Shares are issued are intended to qualify as a compensatory benefit plan within the meaning of Rule 701 of the Securities Act (and any similarly applicable state "blue sky" securities laws) and the issuance of Incentive Shares pursuant hereto is intended to qualify for the exemption from registration under the Securities Act provided by Rule 701 (and any similarly applicable state "blue sky" securities laws); provided, that the foregoing shall not restrict or limit the LLC's ability to issue any Incentive Shares pursuant to any other exemption from registration under the Securities Act available to the LLC. The LLC may make the Incentive Shares and any issuance thereof and any applicable Award Agreements subject to the terms and conditions of any other equity incentive plan consistent with the terms of this Agreement, as may have been adopted by the LLC.

(c) Subject to compliance with the terms of this Agreement and the Rights Agreement, the LLC may from time to time issue additional Shares to existing Members or new Members and may amend this Agreement to designate additional classes of Shares having different relative rights, powers and preferences including, without limitation, rights and powers that are superior and/or prior to those of existing classes of Shares, or the right to vote as a separate class or group on specified matters.

3.02 Conversion of Preferred Shares

(a) Voluntary Conversion. Each Preferred Share shall be convertible, at the option of the holder thereof, at any time and from time to time after the date of issuance of such Preferred Share and without the payment of additional consideration by the holder thereof, into such number of Common Shares as is determined by dividing the Original Issue Price (as defined below) by the Conversion Price (as defined below) in effect at the time of conversion. The "***Original Issue Price***" shall mean $6.7401 per share for each Series A Convertible Preferred Share (as adjusted for any combinations, splits, recapitalizations and similar events with respect to the Series A Convertible Preferred Shares), and $31.3597 per share for each Series B Convertible Preferred Share (as adjusted for any combinations, splits, recapitalizations and similar events with

respect to the Series B Convertible Preferred Shares). The "***Conversion Price***" for each Series A Convertible Preferred Share and Series B Convertible Preferred Share shall initially mean the respective Original Issue Price for such applicable Preferred Share. Such initial Conversion Price, and the rate at which Preferred Shares may be converted into Common Shares, shall be subject to adjustment as set forth herein. To exercise its conversion privilege, a Preferred Member shall give written notice to the LLC that such Preferred Member elects to convert such Preferred Shares. Such notice shall also state the name or names (with address or addresses) in which the Common Shares issuable upon such conversion shall be issued; provided, that if any name or names in which such Common Shares are to be issued reflect a Transfer of such Preferred Shares, such Transfer and issuance shall be subject to the provisions of Article XI hereof. The date the LLC receives such written notice, together with assignment, if required, shall be the "***Conversion Date***". Such conversion shall be deemed to have been effected immediately prior to the close of business on the Conversion Date and the Board shall amend Schedule A to reflect such conversion.

(b) Fractional Shares. No fractional Common Share shall be issued upon conversion of the Preferred Shares. In lieu of any fractional shares to which the holder would otherwise be entitled, the LLC shall pay cash equal to such fraction multiplied by the fair market value of a Common Share as determined in good faith by the Board. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of Preferred Shares the holder is at the time converting into Common Shares and the aggregate number of Common Shares issuable upon such conversion.

(c) Reservation of Shares. The LLC shall at all times when the Preferred Shares shall be outstanding, reserve and keep available out of its authorized but unissued Common Shares, for the purpose of effecting the conversion of the Preferred Shares, such number of its duly authorized Common Shares as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Shares; and if at any time the number of authorized but unissued Common Shares shall not be sufficient to effect the conversion of all then outstanding Preferred Shares, then the LLC and the Members shall take such action as may be necessary to increase its authorized but unissued Common Shares to such number as shall be sufficient for such purposes.

(d) Effect of Conversion. All Preferred Shares which shall have been converted as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate on the Conversion Date, except only the right of the holders thereof to receive Common Shares in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Section 3.02(b) and to receive payment of any distributions that are declared but unpaid thereon. Any Preferred Shares so converted shall be retired and cancelled and may not be reissued, and the LLC may thereafter take such appropriate action as may be necessary to reduce the authorized number of Preferred Shares accordingly.

(e) Taxes. The LLC shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of Common Shares upon conversion of Preferred Shares pursuant to this Section 3.02. The LLC shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of Common Shares in a name other than that in which Preferred Shares so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the LLC the amount of any such tax or has established, to the satisfaction of the LLC, that such tax has been paid.

3.03 Adjustments to Conversion Price for Diluting Issues

(a) Special Definitions. For purposes of this Article III, the following definitions shall apply:

(i) "***Option***" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Shares, Incentive Shares or Convertible Securities.

(ii) "***Series B Original Issue Date***" shall mean the date on which the first Series B Convertible Preferred Share was issued.

(iii) "***Convertible Securities***" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Shares or Incentive Shares, but excluding Options.

(iv) "***Additional Shares***" shall mean all Common Shares or Incentive Shares issued (or, pursuant to Section 3.03(c) below, deemed to be issued) by the LLC after the Series B Original Issue Date, other than the following (collectively, "***Exempted Securities***"):

(1) Shares issued pursuant to the Purchase Agreement;

(2) Common Shares, Options or Convertible Securities issued as a distribution on Preferred Shares;

(3) Common Shares, Options or Convertible Securities issued by reason of a share split, split-up or other distribution on Common Shares that is covered by Section 3.04, 3.05, or 3.06;

(4) Incentive Shares issued to employees or directors of, or consultants or advisors to, the LLC or any of its subsidiaries pursuant to this Agreement and the Incentive Plan or any other equity incentive plan approved by the Board, which approval must include the affirmative vote, consent or approval of at least two of the Preferred Managers;

(5) Common Shares or Convertible Securities actually issued upon the exercise of Options or Common Shares actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;

(6) Common Shares, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board;

(7) Common Shares, Options or Convertible Securities issued to suppliers or third-party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board;

(8) Common Shares, Options or Convertible Securities issued as acquisition consideration pursuant to the acquisition of another entity by the LLC by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, *provided* that such issuances are approved by the Board, including approval of at least two of the Preferred Managers; or

(9) Common Shares, Options or Convertible Securities issued in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board.

(b) No Adjustment of Conversion Price. No adjustment in the Conversion Price of a given series of Preferred Shares shall be made as the result of the issuance or deemed issuance of Additional Shares if the LLC receives written notice from holders of a majority of Preferred Shares of such series agreeing that no such adjustment shall be made in respect of the Conversion Price of such series of Preferred Shares as the result of the issuance or deemed issuance of such Additional Shares.

(c) Deemed Issue of Additional Shares.

(i) If the LLC at any time or from time to time after the Series B Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of Common Shares or Incentive Shares (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(ii) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Conversion Price pursuant to the terms of Section 3.03(d), are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of Common Shares or Incentive Shares issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the LLC upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Price as would have been obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (ii) shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (A) the Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (B) the Conversion Price that would have resulted from any issuances of Additional Shares (other than deemed issuances of Additional Shares as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(iii) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Conversion Price pursuant to the terms of Section 3.03(d) (either because the consideration per share (determined pursuant to Section 3.03(e)) of the Additional Shares subject thereto was equal to or greater than the Conversion Price then in effect, or because such Option or Convertible Security was issued before the Series B Original Issue Date), are revised after the Series B Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase in the number of Common Shares or Incentive Shares issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any decrease in the consideration payable to the LLC upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares subject thereto (determined in the manner provided in Section 3.03(c)(i)) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(iv) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Conversion Price pursuant to the terms of Section 3.03(d), the Conversion Price shall be readjusted to such Conversion Price as would have been obtained had such Option or Convertible Security (or portion thereof) never been issued.

(v) If the number of Common Shares or Incentive Shares issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the LLC upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Conversion Price provided for in this Section 3.03(c) shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (ii) and (iii) of this Section). If the number of Common Shares or Incentive Shares issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the LLC upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Conversion Price that would result under the terms of this Section 3.03(c) at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

(d) Adjustment of Conversion Price Upon Issuance of Additional Shares. In the event the LLC shall at any time after the Series B Original Issue Date issue Additional Shares (including Additional Shares deemed to be issued pursuant to Section 3.03(c)), without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to such issuance or deemed issuance, then the Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

(i) "$CP_2$" shall mean the Conversion Price in effect immediately after such issuance or deemed issuance of Additional Shares;

(ii) "$CP_1$" shall mean the Conversion Price in effect immediately prior to such issuance or deemed issuance of Additional Shares;

(iii) "A" shall mean the number of Common Shares and Incentive Shares outstanding immediately prior to such issuance or deemed issuance of Additional Shares (treating for this purpose as outstanding all Common Shares and Incentive Shares issuable upon exercise of Options outstanding immediately prior to such issuance or deemed issuance or upon conversion or exchange of Convertible Securities (including the Preferred Shares) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

(iv) "B" shall mean the number of Common Shares or Incentive Shares that would have been issued if such Additional Shares had been issued or deemed issued at a price per share equal to CP1 (determined by dividing the aggregate consideration received by the LLC in respect of such issue by CP1); and

(v) "C" shall mean the number of such Additional Shares issued in such transaction.

(e) Determination of Consideration. For purposes of this Section 3.03, the

consideration received by the LLC for the issuance or deemed issuance of any Additional Shares shall be computed as follows:

(i) Cash and Property: Such consideration shall:

(1) insofar as it consists of cash, be computed at the aggregate amount of cash received by the LLC, excluding amounts paid or payable for accrued interest;

(2) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board; and

(3) in the event Additional Shares are issued together with other shares or securities or other assets of the LLC for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (1) and (2) above, as determined in good faith by the Board.

(ii) Options and Convertible Securities. The consideration per share received by the LLC for Additional Shares deemed to have been issued pursuant to Section 3.03(c), relating to Options and Convertible Securities, shall be determined by dividing:

(1) the total amount, if any, received or receivable by the LLC as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the LLC upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(2) the maximum number of Common Shares or Incentive Shares (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

3.04 Adjustment for Share Splits and Combinations

If the LLC shall at any time or from time to time after the Series B Original Issue Date effect a subdivision of the outstanding Common Shares, the Conversion Price in effect immediately before that subdivision shall be proportionately decreased so that the number of Common Shares issuable on conversion of each Preferred Share shall be increased in proportion to such increase in the aggregate number of Common Shares outstanding. If the LLC shall at any time or from time to time after the Series B Original Issue Date combine the outstanding Common Shares, the Conversion Price in effect immediately before the combination shall be proportionately increased so that the number of Common Shares issuable on conversion of each Preferred Share shall be decreased in proportion to such decrease in the aggregate number of Common Shares outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

3.05 Adjustment for Certain Distributions

In the event the LLC at any time or from time to time after the Series B Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Shares entitled to receive, a distribution payable on the Common Shares in additional Common Shares, then and in each such event the Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction: (a) the numerator of which shall be the total number of Common Shares issued and outstanding immediately prior to the time of such issuance or the close of business

on such record date, and (b) the denominator of which shall be the total number of Common Shares issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of Common Shares issuable in payment of such distribution. Notwithstanding the foregoing (i) if such record date shall have been fixed and such distribution is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such distributions; and (ii) that no such adjustment shall be made if the holders of Preferred Shares simultaneously receive a distribution of Common Shares in a number equal to the number of Common Shares as they would have received if all outstanding Preferred Shares had been converted into Common Shares on the date of such event.

3.06 Adjustment for Merger or Reorganization, etc.

Subject to the provisions of Section 10.04, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the LLC in which the Common Shares (but not the Preferred Shares) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Sections 3.03 or 3.05), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each Preferred Share shall thereafter be convertible in lieu of the Common Shares into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of Common Shares of the LLC issuable upon conversion of one Preferred Share immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board) shall be made in the application of the provisions in this Article III with respect to the rights and interests thereafter of the holders of the Preferred Shares, to the end that the provisions set forth in this Article III (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Preferred Shares.

3.07 Certificate as to Adjustments

Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Article III, the LLC at its expense shall, as promptly as reasonably practicable but in any event not later than 10 days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Shares a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Preferred Shares is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The LLC shall, as promptly as reasonably practicable after the written request at any time of any holder of Preferred Shares (but in any event not later than 10 days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Conversion Price then in effect, and (ii) the number of Common Shares and the amount, if any, of other securities, cash or property which then would be received upon the conversion of such Preferred Shares.

3.08 Notice of Record Date

In the event: (a) the LLC shall take a record of the holders of its Common Shares (or other shares or securities at the time issuable upon conversion of the Preferred Shares) for the purpose of entitling or enabling them to receive any distribution, or to receive any right to subscribe for or purchase any shares of any class or any other securities, or to receive any other security; (b) of any capital reorganization of the LLC, any reclassification of the Common Shares, or any Deemed Liquidation Event; or (c) of the voluntary or involuntary dissolution, liquidation or winding-up of the LLC, then, and in each such case, the LLC will send or cause to be sent to the holders of the Preferred Shares a notice specifying, as the case may be, (i) the record date for such distribution or right, and the amount and character of such distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Shares (or such other shares or securities at the time issuable upon the conversion of the Preferred Shares) shall be entitled to exchange their Common Shares (or such other shares or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Preferred Shares and the Common Shares. Such notice shall be sent at least 10 days prior to the record date or effective date for the event specified in such notice.

3.09 Automatic Conversion

Upon either (a) the closing of the sale of Common Shares to the public at a price of at least $31.3597 per share (subject to appropriate adjustment in the event of any share split, combination or other similar recapitalization with respect to the Common Shares), in a firm- commitment underwritten public offering pursuant to an effective registration statement under the Securities Act, resulting in at least $50,000,000 of gross proceeds to the LLC and in connection with such offering the Common Shares are listed for trading on the Nasdaq Stock Market or the New York Stock Exchange or (b) the date and time, or the occurrence of an event, specified by vote or written consent of the Required Holders, then (i) all outstanding Preferred Shares shall automatically be converted into Common Shares at the then effective conversion rate as calculated pursuant to Section 3.02, (ii) such Shares shall not be reissued by the LLC and (i) the Board shall amend Schedule A to reflect such conversion.

3.10 No Tax Effect on Conversion

The parties hereto agree and acknowledge that, absent a change in relevant law from and after the date hereof, the tax consequences of the conversion of Preferred Shares to Common Shares shall be governed by Internal Revenue Service Revenue Ruling 84-52.

3.11 Certificates

Unless otherwise authorized by the Board, the Shares shall be uncertificated. If the Board authorizes the LLC to issue a certificate to each Member representing the Shares held by such Member, such certificates, if issued, shall be in such form and contain such legends, and shall be held subject to such conditions, as the Board may determine including the following:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT") OR THE SECURITIES LAWS OF ANY STATE. SUCH SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT COVERING SUCH SECURITIES UNDER THE ACT AND ALL APPLICABLE STATE SECURITIES LAWS OR AN OPINION SATISFACTORY TO THE LLC THAT SUCH REGISTRATION IS NOT REQUIRED.

THE LLC WILL FURNISH WITHOUT CHARGE TO EACH MEMBER WHO SO REQUESTS THE POWERS, DESIGNATIONS, PREFERENCES AND RELATIVE, PARTICIPATING, OPTIONAL, OR OTHER SPECIAL RIGHTS OF EACH CLASS OF SHARES OR SERIES THEREOF AUTHORIZED TO BE ISSUED BY THE LLC AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND/OR RIGHTS. ANY SUCH REQUEST MAY BE MADE TO THE SECRETARY OF THE LLC.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS (INCLUDING PROXIES, VOTING AGREEMENTS AND RESTRICTIONS ON TRANSFER) OF A CERTAIN AMENDED AND RESTATED OPERATING AGREEMENT, AS AMENDED FROM TIME TO TIME, BY AND AMONG THE LLC AND ITS MEMBERS, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE LLC.

## ARTICLE IV. Board

4.01 Powers

The business of the LLC shall be managed by the Board which shall consist of one or more managers (individually, a "***Manager***" and collectively, the "***Managers***") as set forth in this Article IV. The Board acting collectively as provided in this Agreement (but not any Manager acting individually) is hereby designated a "manager" of the LLC within the meaning of Section 18-101(10) of the Act. The Board shall exercise all the powers of the LLC except as otherwise provided by law or by this Agreement. In the event of a vacancy in the Board, the remaining Managers, except as otherwise provided by law, may exercise the powers of the full Board until the vacancy is filled.

4.02 Election and Qualification

Each Member shall vote all Voting Shares over which such Member has voting control, whether now owned or acquired hereafter and shall take all other necessary or desirable actions within his, her or its control and the LLC shall take all necessary or desirable actions within its control (including, without limitation, calling special Board and Member meetings), so as to cause:

(a) The authorized number of Managers on the Board to be established at seven (7).

(b) The following individuals to be elected to the Board at each meeting to elect, and pursuant to each consent executed for the purpose of electing, the Managers of the Board:

(i) one (1) Series B Manager shall be designated from time to time by RA Capital Healthcare Fund, L.P. and RA Capital NEXUS Fund II, L.P. (together with their Affiliates, "***RA Capital***"), for so long as RA Capital continues to own beneficially at least 500,000 Common Shares (including Common Shares issued or issuable upon conversion of the Preferred Shares), which number is subject to appropriate adjustment for any share splits, combinations, recapitalizations and the like, who initially shall be Derek DiRocco (the "***RA Manager***");

(ii) one (1) Series A Manager shall be designated from time to time by Canaan XI L.P. ("***Canaan***"), for so long as Canaan continues to own beneficially at least 500,000 Common Shares (including Common Shares issued or issuable upon conversion of the Preferred Shares), which number is subject to appropriate adjustment for any share splits, combinations, recapitalizations and the like, who initially shall be Julie Papanek Grant (the "***Canaan Manager***");

(iii) one (1) Series A Manager shall be designated from time to time by Atlas Venture Fund XI, L.P. ("***Atlas***"), for so long as Atlas continues to own beneficially at least 500,000 Common Shares (including Common Shares issued or issuable upon conversion of the Preferred Shares), which number is subject to appropriate adjustment for any share splits, combinations, recapitalizations and the like, who initially shall be Michael Gladstone (the "***Atlas Manager***");

(iv) one (1) Series A Manager shall be designated from time to time by AI Day1 LLC ("***Access***"), for so long as Access continues to own beneficially at least 500,000 Common Shares (including Common Shares issued or issuable upon conversion of the Preferred Shares), which number is subject to appropriate adjustment for any share splits, combinations, recapitalizations and the like, who initially shall be Daniel Becker (the "***Access Manager***");

(v) the person then serving as the Chief Executive Officer of the LLC to serve as the Common Manager (also referred to herein as the "***CEO Manager***"), who shall initially be Jeremy Bender, *provided* that if for any reason the CEO Manager shall cease to serve as the Chief Executive Officer of the LLC, then each of the Members shall promptly vote their respective Shares (i) to remove the former Chief Executive Officer of the LLC from the Board if such person has not resigned as a member of the Board; and (ii) to elect such person's replacement as Chief Executive Officer of the LLC as the new CEO Manager; and

(vi) two (2) individuals, each of whom is not otherwise an Affiliate of the LLC or of any Preferred Member and is acceptable to a majority of the other Managers (the "***Independent Managers***"), which shall initially be John Josey and Natalie Holles.

If (i) RA Capital requests that the RA Manager be removed (with or without cause) by written notice to the LLC and the other Members, (ii) Canaan requests that the Canaan Manager be removed (with or without cause) by written notice to the LLC and the other Members, (iii) Atlas requests that the Atlas Manager be removed (with or without cause) by written notice to the LLC and the other Members, (iv) Access requests that the Access Manager be removed (with or without cause) by written notice to the LLC and the other Members or (v) the holders of a majority of the Voting

Shares, voting together as a single class on an as-converted to Common Share basis, request that an Independent Manager be removed (with or without cause) by written notice to the LLC and the other Members, then, in each such case, such Manager shall be removed from the Board and each Member shall vote all Shares and all other voting securities of the LLC over which such Member has voting control to effect such removal or to consent in writing to effect such removal upon such request. In the event of any vacancy on the Board, all Members shall vote in favor of the filling of such vacancy with an individual designated by the Member or group of Members entitled to designate a Board member to fill such vacancy. All Members agree to execute any written consents required to perform their obligations under this Agreement, and the LLC agrees at the request of any party entitled to designate a Manager to call a special meeting of Members for the purpose of electing Managers.

4.03 Subsidiary Boards and Committees

The LLC shall cause the composition of the board of directors of each subsidiary of the LLC and of each committee thereof to, where the appropriate persons are willing to serve, be consistent with the composition of the Board and each corresponding committee thereof.

4.04 Rights and Powers of the Board

Subject to Section 2.05, the business and affairs of the LLC shall be conducted by or under the direction of the Board, who shall have and may exercise on behalf of the LLC all of its rights and powers under Section 1.02 or as provided by law including, without limitation, the right and power:

(a) to manage the business and affairs of the LLC and for this purpose to employ, retain or appoint any officers, employees, consultants, agents, brokers, professionals or other persons in any capacity for such compensation and on such terms as the Board deems necessary or desirable and to delegate to such persons such of its duties and responsibilities as the Board shall determine;

(b) to enter into, execute, deliver, acknowledge, make, modify, supplement or amend any documents or instruments in the name of the LLC;

(c) to borrow money or otherwise obtain credit and other financial accommodations on behalf of the LLC on a secured or unsecured basis and to perform or cause to be performed all of the LLC’s obligations in respect of its indebtedness and any mortgage, lien or security interest securing such indebtedness;

(d) to issue additional Shares or other rights or other interests in the LLC and to designate additional classes and series of interests in the LLC;

(e) to approve or cause the dissolution of the LLC;

(f) to approve the acquisition of any assets (outside the ordinary course of business), business or a business division, whether by asset purchase, equity purchase, merger, consolidation or otherwise;

(g) to approve a conversion to corporate form or other reorganization in accordance with Section 12.04; and

(h) to approve, without the consent of the Members under the Act, any Deemed Liquidation Event.

4.05 Reliance by Third Parties

Any person dealing with the LLC may rely upon a certificate signed by the Board as to (a) the identity of the officers or Managers; (b) any factual matters relevant to the affairs of the LLC; (c) the persons who are authorized to execute and deliver any document on behalf of the LLC; or (d) any action taken or omitted by the LLC or any Manager.

4.06 Tenure

Except as otherwise provided by law or by this Agreement, the Managers shall hold office until their successors are elected and qualified or until their earlier death, resignation or removal. Any Manager may resign by delivering his or her written resignation to the LLC. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

4.07 Meetings and Expense Reimbursement

Regular meetings of the Board may be held at such time, date and place as the Board may from time to time determine; *provided*, *however*, the Board shall meet at least quarterly, unless otherwise determined by the Board. Special meetings of the Board may be called, orally or in writing, by one or more Managers, designating the time, date and place thereof. Managers may participate in meetings of the Board by means of conference telephone or similar communications equipment by means of which all Managers participating in the meeting can hear each other, and participation in a meeting in accordance herewith shall constitute presence in person at such meeting. The LLC shall reimburse the Managers for all reasonable out-of- pocket expenses incurred by them in connection with attendance at all meetings of the Board and any meetings of committees of the Board and the board of directors of each of the LLC's subsidiaries, including any meetings of committees thereof (including coach fare of domestic flights and a hotel rate with a maximum reimbursement of $700.00 per night, unless otherwise preapproved by the LLC).

4.08 Notice of Meetings

Notice of the time, date and place of all meetings of the Board shall be given to each Manager by the Secretary or Assistant Secretary, or in case of the death, absence, incapacity or refusal of such persons, by one of the Managers (in the case of a regular meeting) or by one of the Managers calling the meeting (in the case of a special meeting). Notice shall be given to each Manager by electronic and written notice delivered to his business or home address at least forty- eight (48) hours in advance of the meeting. Notice need not be given to any Manager if a written waiver of notice is executed by him before or after the meeting. A Manager's presence at a meeting shall constitute a waiver of notice unless such Manager notes at the outset of the meeting that he objects to lack of notice or improper notice. A notice or waiver of notice of a meeting of the Board need not specify the purposes of the meeting.

4.09 Quorum

At any meeting of the Board, the presence of a majority of the Managers then in office shall constitute a quorum; provided, however, to the extent that any action to be taken by the Board at any meeting requires the express affirmative vote or consent of at least two of the Preferred Managers, the presence of two of such Preferred Managers shall be the necessary quorum for such action. Less than a quorum may adjourn any meeting from time to time and the meeting may be held as adjourned without further notice.

4.10 Action at Meeting

At any meeting of the Board at which a quorum is present, the act of a majority of the Managers present at such meeting shall be the act of the Board unless a larger number is required by law or by this Agreement.

4.11 Action by Written Consent

Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if a written consent thereto is signed or consented to by electronic transmission by all of the Managers and filed with the records of the meetings of the Board. Such consent shall be treated as a vote of the Board for all purposes.

4.12 Limitation of Liability of Managers

No Manager shall be obligated personally for any debt, obligation or liability of the LLC or of any Member, whether arising in contract, tort or otherwise, solely by reason of being or acting as Manager of the LLC. A Manager, solely in his, her or its capacity as a Manager, shall not be personally liable to the LLC or the Members for monetary damages for breach of fiduciary duty as a Manager, to the fullest extent permitted by applicable law, except for liability (a) for any breach of such Manager's duty of loyalty to the LLC or the Members, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law or (c) for any transaction from which such Manager derived any improper personal benefit. The LLC renounces, to the fullest extent permitted by law, any interest or expectancy of the LLC in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "***Excluded Opportunity***" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any Manager who is not an employee of the LLC or any of its subsidiaries or (ii) any holder of Preferred Shares or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the LLC or any of its subsidiaries (collectively, "***Covered Persons***"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a Manager.

4.13 No Agency or Authority

No Manager is an agent of the LLC solely by virtue of being a Manager, and unless expressly authorized to do so by the Board after the date hereof, no Manager has the authority to act for or to bind the LLC solely by virtue of being a Manager. Any Manager who takes any action or purports or attempts to bind the LLC in violation of this Section 4.13 shall be solely responsible for any loss and/or expense incurred by the LLC as a result of such unauthorized action, and such Manager shall indemnify and hold harmless the LLC with respect to such loss and/or expense.

4.14 No Liability for Election of Recommended Managers

No Member, nor any Affiliate of any such Member, shall have any liability solely as a result of designating a person for election as a Manager in accordance with the provisions of this Agreement for any act or omission by such designated person in his or her capacity as a Manager, nor shall any Member have any liability solely as a result of voting for any such Manager in accordance with the provisions of this Agreement.

4.15 No "Bad Actor" Designees

(a) Each person with the right to designate or participate in the designation of a Manager as specified above hereby represents and warrants to the LLC that, to such person's knowledge, none of the "bad actor" disqualifying events described in Rule 506(d)(1)(i)-(viii) promulgated under the Securities Act (each, a "***Disqualification Event***"), is applicable to such person's initial designee named above except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable. Any Manager designee to whom any Disqualification Event is applicable, except for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable, is hereinafter referred to as a "***Disqualified Designee***". Each person with the right to designate or participate in the designation of a Manager as specified above hereby covenants and agrees not to designate or participate in the designation of any Manager designee who, to such person's knowledge, is a Disqualified Designee. In the event (i) such person or (ii) to the extent such person referred to in this Section 4.15 is an entity, any general partner or managing member of such entity, or any executive officer of such entity, becomes aware that any individual previously designated by any such person is or has become a Disqualified Designee, such person or the appropriate representative of such entity (as applicable) shall as promptly as practicable take such actions as are necessary to remove such Disqualified Designee from the Board and designate a replacement designee who is not a Disqualified Designee.

(b) Each Member hereby represents and warrants to the LLC that, except as disclosed in writing to the LLC, no Disqualification Event is applicable to such Member. Each Member covenants to provide immediate written notice to the LLC in the event that a Disqualification Event becomes applicable to such Member. Each Member covenants to provide such information to the LLC as the LLC may reasonably request in order to comply with the disclosure obligations set forth in Rule 506(e) promulgated under the Securities Act, as may be amended from time to time.

## ARTICLE V. Officers

5.01 Enumeration

The Board may appoint, at any time, officers of the LLC (including, without limitation, a President and Chief Executive Officer, a Chief Financial Officer, a Secretary and such other officers including one or more Vice Presidents, Assistant Treasurers and Assistant Secretaries, as the Board may determine) to exercise such powers and perform such duties as the Board designates.

5.02 Election

Officers may be designated by the Board at any time and from time to time.

5.03 Qualification

No officer need be a Member or a Manager. Any two or more offices may be held by the same person.

5.04 Tenure

Except as otherwise provided by the Act or by this Agreement, each of the officers of the LLC shall hold his or her office until his or her successor is elected and qualified or until his or her earlier death, resignation or removal. Any officer may resign by delivering his or her written resignation to the Board, and such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

5.05 Removal

The Board may remove any officer at any time with or without cause.

5.06 Vacancies

Any vacancy in any office may be filled by the Board.

5.07 President; Chief Executive Officer; and Chairman of the Board

The President and Chief Executive Officer shall, subject to the direction of the Board, have general supervision and control over the personnel and operations of the LLC's business. Unless otherwise provided by the Board, the Chairman of the Board, who shall be the Canaan Manager, shall preside, when present, at all meetings of Members and of the Board.

5.08 Vice Presidents

Any Vice President shall have such powers and shall perform such duties as the Board may from time to time designate. Unless specifically authorized by the Board or the Chief Executive Officer, no Vice President shall be an agent of the LLC or have any right, power or authority to act for or to bind the LLC or to undertake or assume any obligation or responsibility of the LLC.

5.09 Chief Financial Officer and Assistant Treasurers

The Chief Financial Officer shall, subject to the direction of the Board, have general charge of the financial affairs of the LLC and shall cause to be kept accurate books of account. He or she shall have custody of all funds, securities, and valuable documents of the LLC, except as the Board may otherwise provide. Any Assistant Treasurer shall have such powers and perform such duties as the Board may from time to time designate.

5.10 Secretary and Assistant Secretaries

The Secretary shall record all the proceedings of the meetings of the Members and the Board (including committees of the Board) in books kept for that purpose. In his or her absence from any such meeting an Assistant Secretary, or if there is none or he or she is absent, a temporary secretary chosen at the meeting, shall record the proceedings thereof. The Secretary shall have such other duties and powers as may be designated from time to time by the Board or the Chief Executive Officer. Any Assistant Secretary shall have such powers and perform such duties as the Board may from time to time designate.

5.11 Other Powers and Duties

Subject to this Agreement, each officer of the LLC shall have in addition to the duties and powers specifically set forth in this Agreement, such duties and powers as are customarily incident to his or her office, and such duties and powers as may be designated from time to time by the Board.

## ARTICLE VI. Indemnification

6.01 Indemnification of Managers and Officers

Except for claims as to which such Manager or officer has expressly agreed in writing to provide indemnity or has otherwise guaranteed any obligation of the LLC or any subsidiary of the LLC, the LLC shall indemnify, to the fullest extent permitted by the Act as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the LLC to provide broader indemnification rights than said law permitted the LLC to provide prior to such amendment) any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (whether or not brought by or in the right of the LLC) by reason of the fact that he or she is or was a Manager or officer of the LLC, or is or was serving at the request of the LLC as a director, manager or officer of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such suit, action or proceeding if he or she acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the LLC, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the LLC and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful. Notwithstanding the foregoing, the LLC shall indemnify any such person seeking indemnification in connection with an action, suit or proceeding initiated by such person only if the initiation and continued prosecution of such action, suit or proceeding was authorized by the Board.

6.02 Indemnification of Employees and Agents

The Board, in its discretion, may authorize the LLC to indemnify any person who was or is a party or is threatened to be made a party to any threatened pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (whether or not brought by or in the right of the LLC) by reason of the fact that he or she is or was an employee or agent of the LLC, or is or was serving at the request of the LLC as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the LLC and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the LLC and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

6.03 Indemnification Upon Successful Defense

Except for claims as to which such Manager, officer or employee has agreed to provide indemnity or has otherwise guaranteed any obligation of the LLC or any subsidiary of the LLC, notwithstanding the other provisions of this Article VI, to the extent that a Manager, officer or employee of the LLC has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 6.01 or 6.02 of this Agreement, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees and disbursements) and costs actually and reasonably incurred by such person in connection therewith.

6.04 Advance Payments

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the LLC in advance of the final disposition of such action, suit or proceeding, only as authorized by the Board in the specific case (including by one or more Managers who may be parties to such action, suit or proceeding), upon receipt of an undertaking by or on behalf of the Manager, officer, employee or agent to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the LLC as authorized in this Article VI.

6.05 Non-Exclusive Nature of Indemnification

The indemnification provided herein shall not be deemed exclusive of any other rights to which any person, whether or not entitled to be indemnified hereunder, may be entitled under any statute, by-law, agreement, vote of Members or Managers or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Manager, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person. Each person who is or becomes a Manager as aforesaid shall be deemed to have served or to have continued to serve in such capacity in reliance upon the indemnity provided for in this Article VI. The LLC hereby acknowledges that a Manager may have other sources of indemnification or insurance, whether currently in force or established in the future (collectively, the "***Outside Indemnitors***"). The LLC hereby agrees: (a) that it is the indemnitor of first resort (i.e., its obligations to the Manager are primary and any obligation of the Outside Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by the Manager are secondary); (b) that it shall be required to advance the full amount of expenses incurred by the Manager and shall be liable in full for all indemnifiable amounts to the extent legally permitted and as required hereby or any agreement between the LLC and the Manager, without regard to any rights the Manager may have against the Outside Indemnitors; and (c) that it irrevocably waives, relinquishes and releases the Outside Indemnitors from any and all claims against the Outside Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The LLC further agrees that no advancement or payment by the Outside Indemnitors on behalf of the Manager with respect to any claim for which the Manager have sought indemnification from the LLC shall affect the foregoing and the Outside Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of the Manager against the LLC. If for any reason a court of competent jurisdiction determines that the Outside Indemnitors are not entitled to the subrogation rights described in the preceding sentence, the Outside Indemnitors shall have a right of contribution by the LLC to the Outside Indemnitors with respect to any advance or payment by the Outside Indemnitors to or on behalf of an Indemnified Person. The LLC agrees that the Outside Indemnitors are express third party beneficiaries of the terms hereof.

6.06 Insurance

The LLC may purchase and maintain insurance on behalf of any person who is or was a Manager, officer, employee or agent of the LLC, or is or was serving at the request of the LLC as a director, manager, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the LLC would have the power to indemnify him or her against such liability under the provisions of the Act (as presently in effect or hereafter amended) or this Agreement.

## ARTICLE VII. Transactions with Interested Persons

7.01 Transactions with Interested Persons

No contract or transaction between the LLC and one or more of its Managers or Members, or between the LLC and any other corporation, partnership, association or other organization in which one or more of its Managers or Members have a financial interest or are directors, managers, partners, stockholders, members or officers, shall be voidable solely for this reason or solely because said Manager or Member was present at, or participated in, the authorization of such contract or transaction if:

(a) the material facts as to the relationship or interest of said Manager or Member and as to the contract or transaction were disclosed or known to the other Managers (if any) or the Members and the contract or transaction was authorized by the affirmative vote of a majority of the disinterested Managers (if any) even though the disinterested Managers may be less than a quorum or the contract or transaction was authorized by the affirmative vote of a majority of the Voting Shares (determined on an as-converted to Common Shares basis) held by the disinterested Members (if any) even though the disinterested Members may be less than a quorum; or

(b) the contract or transaction was fair to the LLC as of the time it was authorized, approved or ratified by the Board.

No Manager or Member interested in such contract or transaction, because of such interest, shall be considered to be in breach of this Agreement or liable to the LLC, any Manager or Member, or any other person or organization for any loss or expense incurred by reason of such contract or transaction or shall be accountable for any gain or profit realized from such contract or transaction.

## ARTICLE VIII. Capital Accounts, Contributions and Loans

8.01 Capital Accounts

A separate capital account (a "***Capital Account***") shall be maintained for each Member in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv), and this Section 8.01 shall be interpreted and applied in a manner consistent with said Section of the Treasury Regulations. Each Member's Capital Account (a) shall be increased by (i) the amount of money contributed by such Member to the LLC, (ii) the fair market value of property contributed by such Member to the LLC (net of liabilities secured by such contributed property that the LLC is considered to assume or take subject to under Code Section 752) and (iii) allocations to such Member of net income and any items of income or gain allocated to such Member pursuant to Article IX and (b) shall be decreased by (i) the amount of money distributed to such Member by the LLC, (ii) the fair market value of property distributed to such Member by the LLC (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Code Section 752) and (iii) allocations to such Member of net losses and any items of loss or deduction allocated to such Member pursuant to Article IX. Upon the disposition of any Shares, the Capital Account of the disposing Member that is attributable to such Shares shall carry over to the assignee in accordance with the provisions of Treasury Regulation Section 1.704-1(b)(2)(iv)(1). In accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f), the LLC shall adjust the Capital Accounts of its Members to reflect revaluations (including any unrealized income, gain or loss) of the LLC property (including intangible assets such as goodwill), whenever it issues additional interests in the LLC (including any interests with a zero initial Capital Account), whenever it redeems interests in the LLC, whenever the adjustments would otherwise be permitted under such Treasury Regulations or as provided in Section 3.01(b)(vi). In the event that the Capital

Accounts of the Members are so adjusted, (1) the Capital Accounts of the Members shall be adjusted in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g) for allocations of depreciation, depletion, amortization and gain or loss, as computed for book purposes, with respect to such property and (2) the amount of upward and/or downward adjustments to the book value of the LLC property shall be treated as net income, net loss, gross income, gain, gross deduction and/or gross loss for purposes of applying the allocation provisions of Article IX.

8.02 Contributions

Each Member has made the contribution to the capital of the LLC (each, a "***Contribution***") as set forth in the LLC's records. The value of all non-cash Contributions made by Members shall be determined by the Board. No Member shall be entitled to any interest or compensation with respect to its Contribution or any services rendered on behalf of the LLC except as specifically provided in this Agreement or approved by the Board. No Member shall have any liability for the repayment of the Contribution of any other Member and each Member shall look only to the assets of the LLC for a return of his, her or its Contribution.

## ARTICLE IX. Allocations

9.01 Allocation of Net Income

Subject to Sections 9.04 through 9.17, net income for any fiscal year or portion thereof shall be allocated among the Members as follows:

(a) First, to the Members until the aggregate allocations of net income to such Members pursuant to this Section 9.01(a) are equal to the aggregate allocations of net loss to such Members pursuant to Section 9.02(c), in proportion to such unoffset net losses;

(b) Thereafter, to the Members until the aggregate allocations of net income to such Members pursuant to this Section 9.01(b) are equal to the aggregate allocations of net loss to such Members pursuant to Section 9.02(b), in proportion to such unoffset losses;

(c) Thereafter, to the holders of the Preferred Shares, on a *pari passu* basis, until the aggregate allocations of net income to such holders pursuant to this Section 9.01(c) are equal to the aggregate allocations of net loss to such holders pursuant to Section 9.02(a) (in proportion to such unoffset net losses) to the extent such allocations of net loss caused the Capital Accounts of such holders to be less than the aggregate Initial Preferred Liquidation Amount (as defined below) in respect of all of the Preferred Shares held by such holders; and

(d) Thereafter, to the Members in proportion to the number of Shares held by such Members (with each Preferred Share treated as the number of Common Shares into which such Preferred Share is then convertible).

9.02 Allocation of Net Loss

Subject to Sections 9.03 through 9.17, net loss for any fiscal year or portion thereof shall be allocated among the Members as follows:

(a) First, to the holders of Preferred Shares in proportion of the number of Preferred Shares held by such holders to the extent of their positive Capital Account balances;

(b) Thereafter, to the Members in proportion to the number of Shares held by such Members (with each Preferred Share treated as the number of Common Shares into which such Preferred Share is then convertible) to the extent of their positive Capital Account balances; and

(c) Thereafter, to the Members in proportion to the number of Shares held by such Members (with each Preferred Share treated as the number of Common Shares into which such Preferred Share is then convertible).

9.03 Loss Limitation

Net loss allocated pursuant to Section 9.02 shall not exceed the maximum amount of net loss that can be allocated without causing or increasing a deficit balance in any Member's Capital Account (in excess of such Member's obligation to restore a deficit in its Capital Account, including any deemed obligation pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5)). In the event that some but not all of the Members would have deficit balances in their Capital Accounts as a consequence of allocations of net loss pursuant to Section 9.02 in excess of the amount, if any, permitted under the preceding sentence, the limitation set forth in this Section 9.03 shall be applied on a Member by Member basis, and net loss not allocable to any Member as a result of this limitation shall be allocated to the other Members in proportion to the positive balances of such Members' Capital Accounts so as to allocate the maximum amount of net loss to each Member under Treasury Regulations Section 1.704-1(b)(2)(ii)(d). In making the foregoing determination, a Member's Capital Account shall be reduced by the amounts described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6).

9.04 Allocations Upon Conversion

Notwithstanding any other provision of this Article IX (except Sections 9.06 through 9.12), in the year of a conversion of Preferred Shares into Common Shares under Section 3.02 and immediately prior to such conversion, net income (or, if applicable, net loss) shall first be allocated to the holder of Preferred Shares so converting, pro rata in proportion to such Preferred Shares being converted until the Capital Account balance attributable to each such Preferred Share being converted is equal to the aggregate Capital Account balance attributable to all outstanding Common Shares divided by the number of outstanding Common Shares multiplied by the number of Common Shares into which such Preferred Shares are convertible. If net income (or, if applicable, net loss) in any year is insufficient to make the full allocation provided for in the preceding sentence, then, in lieu of such special allocation of net income (or, if applicable, net loss) provided for in the preceding sentence, items of gross income (or, if applicable, gross deductions) shall be allocated to the holders of Preferred Shares being converted and, if such gross items are insufficient to make the full required allocation, items of gross deductions (or, if applicable, gross income) shall be made to the holders of Common Shares pro rata in proportion to such Common Shares outstanding. If (a) in any year gross items are insufficient to make the full allocation provided in this Section 9.04 and (b) the LLC's federal

income tax return for the immediately preceding year has not yet been filed, in each case determined as of the event giving rise to such allocation, then any such shortfall shall be taken into account in such immediately preceding year rather than in the current year as an allocation to be made under this Section 9.04. Immediately after any conversion under Section 3.02, the Capital Account balances of the Preferred Shares being converted shall be allocated to the holders of the Common Shares received upon such a conversion, pro rata in proportion to such Common Shares.

9.05 Allocations Upon Liquidation or Sale

Notwithstanding any other provision of this Article IX (except Sections 9.06 through 9.12), in the year in which the LLC liquidates (within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g)), or sells all or substantially all of the assets of the LLC, or recapitalizes, net income shall first be allocated to the holders of Shares to eliminate any deficit balance in a Member's Capital Account and thereafter net income (or net loss) shall be allocated to the Capital Account balances of the Members so as to permit liquidating distributions in accordance with Section 10.04(a). If net income (or, if applicable, net loss) in any year is insufficient to make the full allocation provided for in the preceding sentence, then, in lieu of such special allocation of net income (or, if applicable, net loss) provided for in the preceding sentence, items of gross income (or, if applicable, gross deductions) shall be allocated to the holders of Shares to the extent required to satisfy the preceding sentence. If (a) in any year gross items are insufficient to make the full allocation provided in this Section 9.05 and (b) the LLC's federal income tax return for the immediately preceding year has not yet been filed, in each case determined as of the event giving rise to such allocation, then any such shortfall shall be taken into account in such immediately preceding year rather than in the current year as an allocation to be made under this Section 9.05.

9.06 Qualified Income Offset

Any Member who unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulations Section l.704- l(b)(2)(ii)(d)(4), (5) or (6) that causes or increases a deficit balance in its Capital Account in excess of any obligation to restore a deficit balance in its Capital Account (including a deemed deficit restoration obligation pursuant to Treasury Regulations Sections 1.704-2(g)(1) and (i)(5), and adjusted as provided in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)) shall be allocated items of income and gain in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, such deficit balance as quickly as possible. This Section 9.06 is intended to comply with the alternate test for economic effect set forth in Treasury Regulations Section l.704-l(b)(2)(ii)(d) and shall be interpreted and applied in a manner consistent therewith.

9.07 Gross Income Allocation

In the event any Member has a deficit Capital Account at the end of any year which is in excess of the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of LLC income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 9.07 shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article IX have been made as if Section 9.06 and this Section 9.07 were not in the Agreement.

9.08 Nonrecourse Deductions

Nonrecourse Deductions shall be allocated among the Members in accordance with Sections 9.02 and 9.10. For purposes of this Section 9.08, the term "Nonrecourse Deductions" shall have the meaning set forth in Treasury Regulations Section 1.7042(b)(1).

9.09 LLC Minimum Gain Chargeback

Notwithstanding any other provisions of this Article IX, in the event there is a net decrease in LLC Minimum Gain during an LLC fiscal year, the Members shall be allocated items of income and gain in accordance with Treasury Regulations Section 1.704-2(f). For purposes of this Article IX, the term "***LLC Minimum Gain***" shall have the meaning for "partnership minimum gain" set forth in Treasury Regulations Section 1.704-2(b)(2), and any Member's share of LLC Minimum Gain shall be determined in accordance with Treasury Regulations Section 1.704-2(g)(1). This Section 9.09 is intended to comply with the minimum gain chargeback requirement of Treasury Regulations Section 1.704-2(f) and shall be interpreted and applied in a manner consistent therewith.

9.10 Member Nonrecourse Debt

Notwithstanding any other provisions of this Article IX, to the extent required by Treasury Regulations Section 1.704-2(i), any items of income, gain, deduction and loss of the LLC that are attributable to a nonrecourse debt of the LLC that constitutes Member Nonrecourse Debt (including chargebacks of "partner nonrecourse debt minimum gain" (as used in the Code) (the "***Member Nonrecourse Debt Minimum Gain***")) shall be allocated in accordance with the provisions of Treasury Regulations Section 1.704-2(i). For purposes of this Article IX, the term "***Member Nonrecourse Debt***" shall have the meaning for "partner nonrecourse debt" set forth in Treasury Regulations Section 1.704-2(b)(4). This Section 9.10 is intended to satisfy the requirements of Treasury Regulations Section 1.704-2(i) (including the partner nonrecourse debt chargeback requirements) and shall be interpreted and applied in a manner consistent therewith.

9.11 Member Minimum Gain Chargeback

Except as otherwise provided in Treasury Regulations Section 1.704-2(i)(4), notwithstanding any other provision of this Article IX, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any fiscal year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(5), shall be specially allocated items of LLC income and gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt determined in accordance with Treasury Regulations Section 1.704- 2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 9.11 is intended to comply with the minimum gain chargeback requirement in Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

9.12 Curative Allocations

The allocations set forth in Sections 9.06 through 9.11 (the "***Regulatory Allocations***") are intended to comply with the requirements of Treasury Regulations Sections 1.704-1(b) and 1.704-2. Notwithstanding any other provisions of this Article IX (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating other items of income, gain, deduction and loss among the Members so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred. This Section 9.12 shall be interpreted and applied in such a manner and to such extent as is reasonably necessary to eliminate, as quickly as possible, permanent economic distortions that would otherwise occur as a consequence of the Regulatory Allocations in the absence of this Section 9.12.

9.13 Distributions of Nonrecourse Liability Proceeds

If, during a taxable year, the LLC makes a distribution to any Member that is allocable to the proceeds of any nonrecourse liability of the LLC that is allocable to an increase in LLC Minimum Gain pursuant to Treasury Regulations Section 1.704-2(h), then the LLC shall elect, to the extent permitted by Treasury Regulations Section 1.704-2(h)(3), to treat such distribution as a distribution that is not allocable to an increase in LLC Minimum Gain.

9.14 Allocation of Debt

For tax purposes, the indebtedness of the LLC shall be allocated among the Members under Code Section 752.

9.15 Compliance with Code Section 704(b)

The allocation provisions contained in this Article IX are intended to comply with Code Section 704(b) and the Treasury Regulations promulgated thereunder and shall be interpreted and applied in a manner consistent therewith.

9.16 Section 704(c)

In accordance with Section 704(c) of the Code and the Treasury Regulations promulgated thereunder, property contributed to the LLC, which at the time of contribution has a fair market value as reflected in the Capital Account of the contributing Member in excess of its adjusted tax basis, is treated as Section 704(c) property. Items of income, gain, loss, and deduction with respect to any Section 704(c) property shall solely for Federal income tax purposes be allocated among the Members so as to take into account any variation between the adjusted tax basis of the property contributed to the LLC and its initial fair market value. The method for allocating such items of income, gain, loss, and deduction shall be the "traditional method" described in Treasury Regulation Section 1.704-3(b). In the event the book value of any property of the LLC

is adjusted pursuant to this Agreement, allocations of income, gain, loss, and deduction and credit with respect to such property shall take into account any variation between the adjusted price of such property for Federal income tax purposes and its fair market value in the same manner as under Section 704(c) of the Code and the Treasury Regulations promulgated thereunder.

9.17 Forfeiture Allocations

If allocations have been made to a Capital Account of an Incentive Member with respect to the Incentive Member's Unvested Incentive Shares and any portion of such Unvested Incentive Shares is forfeited or the ownership thereof does not completely vest in accordance with the instrument under which the Unvested Incentive Shares were issued, then the "forfeiture allocations" described in Proposed Treasury Regulations Sections 1.704-1(b)(4)(xii)(c) and 1.704-1(b)(4)(xii)(d), or as otherwise provided in the Proposed Rules, may be made to the Incentive Member's Capital Account in the manner described therein so that allocations of the LLC's net income, net loss and separate items thereof have economic effect as required by Section 704(b) of the Code.

9.18 Determinations

For purposes of this Agreement, "net income" and "net losses" shall be determined in a manner that is consistent with Section 703 of the Code and shall be adjusted to the extent necessary to reflect the requirements of Sections 704 and 705 of the Code and the Treasury Regulations promulgated thereunder (including without limitation, the requirements of Section 704(c) and the "substantial economic effect" safe harbor). Any elections or other decisions relating to Capital Accounts and tax allocations shall be made by the LLC in any manner that reasonably reflects the purpose and intent of this Agreement.

## ARTICLE X. Distributions

10.01 Distribution of LLC Funds

(a) Subject to Section 2.05, the Members shall be entitled to receive distributions only (x) when determined by the Board, (y) as contemplated by Section 10.03 or (z) as contemplated by Section 10.04 in the event of any voluntary or involuntary liquidation, dissolution or winding up of the LLC or Deemed Liquidation Event. To the extent that the Board determines that any distributions shall be made to the Members other than distributions pursuant to Section 10.03 or 10.04, such distributions shall be distributed to the Members in the following order of priority:

(i) First, to the holders of the Preferred Shares, pro rata in proportion to the aggregate Initial Preferred Liquidation Amounts in respect of all of the Preferred Shares held by such holders until the LLC has made aggregate distributions in respect of such Preferred Shares such that the aggregate unpaid Initial Preferred Liquidation Amount in respect of such Preferred Shares is equal to $0; and

(ii) Thereafter, to the Members in proportion to the number of Shares held by such Members (with each Preferred Share treated as the number of Common Shares into which such Preferred Share is then convertible); provided, however, that any such distributions in respect of Incentive Shares shall be subject to the terms and conditions set forth in Section 10.05.

(b) No Member shall be entitled to any distribution or payment with respect to its interest in the LLC except as set forth in this Agreement. Distributions may be limited and repayable as provided in the Act.

10.02 Amount Withheld

The LLC is authorized to withhold from distributions or with respect to allocations and pay over to any federal, state, local or foreign government any amounts required to be withheld with respect to any Member pursuant to any provisions of federal, state, local or foreign law. All amounts so withheld shall be treated as amounts distributed to the Members pursuant to Section 10.01 of this Agreement. To the extent any amount withheld with respect to a Member pursuant to this Section 10.02 for any year exceeds the amount distributable to such Member for such year, such Member shall repay such excess to the LLC within ten (10) days after such Member receives written notice from the LLC of the amount of such excess. The LLC will withhold, from all payments owed to each Member hereunder, United States withholding taxes at the rate provided under Section 10.03(a)(ii)(B) unless the LLC has received from such Member proof, satisfactory to the LLC in its sole discretion, that payment to such Member is exempt from withholding taxes or subject to a reduced treaty rate as documented on a U.S. Treasury Form W- 9, W-8ECI, W-8BEN, or other applicable W-8 as the case may be. Each such Member shall provide such documentation to the LLC within fifteen (15) days after the date of this Agreement or prior to any distribution made to such Member, whichever comes first.

10.03 Tax Distributions

(a) Notwithstanding Section 10.01 hereof, within ten (10) days after March 31, May 31, August 31 and December 31 of each fiscal year (each, a "***Tax Quarter***"), the Board shall (i) estimate the amount of taxable income of the LLC allocable to each Member (for avoidance of doubt, disregarding all deductions, credits, tax benefits, etc. personal to such Member, including any such items arising pursuant to the operation of Code Section 743) for federal income tax purposes for the period beginning on the first day of the fiscal year through the end of such Tax Quarter and (ii) to the extent that funds are legally available therefor, advance to each Member, other than a tax-exempt Member, an aggregate amount equal to the product of (A) the net taxable income, if any, of the LLC for such Tax Quarter allocable to such Member, times (B) the highest applicable effective marginal Federal and state income tax rate for either an individual or a corporation which is domiciled in the State of California, U.S.A. and assuming all income is allocated to the State of California, U.S.A. All amounts so advanced shall be treated as amounts distributed to the Member pursuant to Section 10.01, and shall be reduced by any amount withheld with respect to the Member pursuant to Section 10.02.

(b) If the LLC does not have funds legally available to distribute on a timely basis the full tax distributions that would otherwise be required pursuant to Section 10.03(a) above, then: (i) such tax distributions shall be made to the Members in proportion to the tax distributions they would receive had the full amount of funds been available; and (ii) the unpaid amount shall carry forward and be paid by the LLC as soon as the LLC has funds legally available.

10.04 Distribution Upon Liquidation or Dissolution

(a) In the event the LLC (or a Member's interest therein) is "liquidated" within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g), subject to the prior payment of all liabilities of the LLC, subject to Section 10.05 with respect to distributions to Incentive Members, all distributions shall be made pursuant to this Section 10.04 to the Members (or such Member, as appropriate) in accordance with their positive Capital Account balances pursuant to Treasury Regulations Section 1.704-1(b)(2)(ii)(*b*)(*2*). The parties to this Agreement intend that the allocation provisions contained in this Agreement shall produce final Capital Account balances of the Members that will permit liquidating distributions to be made to the Members pursuant to Section 10.04(b). To the extent that the allocation provisions contained in this Agreement (including, without limitation, Section 9.05) fail to produce such final adjusted Capital Account balances, (i) such provisions shall be amended if and to the extent necessary to produce such result, (ii) net income and net losses of the LLC (or items of gross income and deduction of the LLC) shall be allocated by the LLC among the Members for current and future years and (iii) the provisions of this sentence shall control notwithstanding any reallocation or adjustment of net income or net loss (or items thereof) by the Internal Revenue Service or other taxing authority. Notwithstanding anything to the contrary herein, if, after any amendments and allocations provided in the immediately preceding sentence, the final Capital Account balances of the Members are still not consistent with the liquidating distributions to be made to the Members pursuant to Section 10.04(b), such liquidating distributions shall be made in accordance with Section 10.04(b) rather than this Section 10.04(a).

(b)

(i) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the LLC, the holders of Preferred Shares then outstanding shall be entitled to be paid out of the assets of the LLC available for distribution to the Members, and in the event of a Deemed Liquidation Event (as defined below) the holders of Preferred Shares then outstanding shall be entitled to be paid out of the consideration payable to the Members in such Deemed Liquidation Event or out of the Available Proceeds (as defined below), as applicable, before any payment shall be made to the holders of Common Shares and Incentive Shares by reason of their ownership thereof, an amount per Preferred Share equal to the difference between (A) the Original Issue Price in respect of such Preferred Share and (B) the amount previously distributed by the LLC in respect of such Preferred Share under Section 10.01(a)(i) (the amount payable pursuant to this sentence, is hereafter referred to as the "***Initial Preferred Liquidation Amount***"). If upon any such liquidation, dissolution or winding up of the LLC or Deemed Liquidation Event, the assets of the LLC available for distribution to the Members shall be insufficient to pay the holders of Preferred Shares the full amount to which they shall be entitled under this Section 10.04(b)(i), the holders of Preferred Shares shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the Preferred Shares held by them upon such distribution if all amounts payable on or with respect to such Preferred Shares were paid in full.

(ii) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the LLC, after the payment in full of all Initial Preferred Liquidation Amounts required to be paid to the holders of Preferred Shares, the remaining assets of the LLC available for distribution to the Members or, in the case of a Deemed Liquidation Event, the consideration

not payable to the holders of Preferred Shares pursuant to Section 10.04(b)(i) or the remaining Available Proceeds, as the case may be, shall be distributed among the holders of Preferred Shares, Common Shares and Incentive Shares, pro rata based on the number of Incentive Shares and Common Shares held by each such holder, treating for this purpose all Preferred Shares as if they had been converted to Common Shares pursuant to the terms of this Agreement immediately prior to such liquidation, dissolution or winding up of the LLC or Deemed Liquidation Event; provided, however, that any such distributions in respect of Incentive Shares shall be subject to the terms and conditions set forth in Section 10.05. The aggregate amount which a holder of a Preferred Share is entitled to receive in respect of such Preferred Share under Section 10.04(b)(i) and Section 10.04(b)(ii) is hereinafter referred to as the "***Applicable Liquidation Amount***."

(c) Each of the following events shall be considered a "***Deemed Liquidation Event***" unless the Required Holders elect otherwise by written notice sent to the LLC at least ten (10) days prior to the effective date of any such event:

(i) a merger or consolidation in which (A) the LLC is a constituent party or (B) a subsidiary of the LLC is a constituent party and the LLC issues Shares pursuant to such merger or consolidation, except any such merger or consolidation involving the LLC or a subsidiary in which the Shares outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for equity securities that represent, immediately following such merger or consolidation, a majority, by voting power, of the equity securities of (1) the surviving or resulting company; or (2) if the surviving or resulting company is a wholly owned subsidiary of another company immediately following such merger or consolidation, the parent company of such surviving or resulting company; or

(ii) (A) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the LLC or any subsidiary of the LLC of all or substantially all the assets of the LLC and its subsidiaries taken as a whole or (B) the sale or disposition (whether by merger, consolidation or otherwise, and whether in a single transaction or a series of related transactions) of one or more subsidiaries of the LLC if substantially all of the assets of the LLC and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the LLC.

(d)

(i) The LLC shall not have the power to effect a Deemed Liquidation Event referred to in Section 10.04(c)(i)(A) unless the agreement or plan of merger or consolidation for such transaction (the "***Merger Agreement***") provides that the consideration payable to the Members of the LLC in such Deemed Liquidation Event shall be paid to the Members of the LLC in accordance with Section 10.04(b).

(ii) In the event of a Deemed Liquidation Event referred to in Section 10.04(c)(i)(B) or 10.04(c)(ii), if the LLC does not effect a dissolution of the LLC under the Act within ninety (90) days after such Deemed Liquidation Event, then (A) the LLC shall send a written notice to each holder of Preferred Shares no later than the ninetieth ($90^{th}$) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to

secure such right) pursuant to the terms of the following clause; (B) to require the redemption of such Preferred Shares; and (C) if the Required Holders so request in a written instrument delivered to the LLC not later than one hundred twenty (120) days after such Deemed Liquidation Event, the LLC shall use the consideration received by the LLC for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board), together with any other assets of the LLC available for distribution to the Members, all to the extent permitted by the Act (the "***Available Proceeds***"), on the one hundred fiftieth (150th) day after such Deemed Liquidation Event, to redeem all outstanding Preferred Shares at a price per share for each such Preferred Share equal to the Applicable Liquidation Amount in respect of such Preferred Share. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding Preferred Shares, the LLC shall redeem a pro rata portion of each holder's Preferred Shares to the fullest extent of such Available Proceeds, based on the respective amounts which would otherwise be payable in respect of the Preferred Shares to be redeemed if the Available Proceeds were sufficient to redeem all such Preferred Shares, and shall redeem the remaining Preferred Shares as soon as it may lawfully do so under the Act. Prior to the distribution or redemption provided for in this Section 10.04(d), the LLC shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event.

(e) Amount Deemed Paid or Distributed. Subject to Section 10.04(f), the amount deemed paid or distributed to the Members of the LLC upon any Deemed Liquidation Event shall be the cash or the value of the property, rights or securities to be paid or distributed to such holders pursuant to such Deemed Liquidation Event. Subject to Section 10.04(f), the value of such property, rights or securities shall be determined in good faith by the Board of the LLC.

(f) Allocation of Escrow and Contingent Consideration. Notwithstanding Section 10.04(e), in the event of a Deemed Liquidation Event, if any portion of the consideration payable to the LLC or the Members is payable only upon satisfaction of contingencies (whether upon the occurrence of any event, the passage of time or otherwise, including, without limitation, any deferred purchase price payments, installment payments, payments made in respect of any promissory note issued in such transaction, payments from escrow, purchase price adjustment payments or payments in respect of "earnouts" or holdbacks) (collectively, the "***Additional Consideration***"), the definitive agreements with respect to such Deemed Liquidation Event shall provide that (i) the portion of such consideration that is not Additional Consideration (such portion, the "***Initial Consideration***") shall be allocated among the Members in accordance with Section 10.04(b)(i) and Section 10.04(b)(ii) as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable upon satisfaction of such contingencies shall be allocated among the Members of the LLC in accordance with after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Section 10.04(f), consideration placed into escrow or retained as a holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

10.05 Distributions on Account of Unvested Shares; Participation Thresholds

(a) Notwithstanding the provisions set forth in Section 10.01 and Section 10.04, no distribution, other than a distribution made in accordance with Section 10.03, shall be made to an Incentive Member with respect to Unvested Incentive Shares held by such Incentive Member. Any amount that would otherwise be distributed to an Incentive Member pursuant to Section 10.01 but for the application of the preceding sentence shall instead be retained by the LLC and paid to such Member if, as and when the Unvested Incentive Shares to which such retained amount relates vests pursuant to the terms of the applicable Award Agreement and the Incentive Plan; provided that, with approval of the Board, which approval must include the affirmative vote, consent or approval of at least two of the Preferred Managers, the Board shall be authorized to distribute retained amounts on any Unvested Incentive Shares to the holder of such Unvested Incentive Shares at such time or times prior to the vesting of such Incentive Shares and upon such terms and conditions as the Board shall deem advisable, and which determination shall be made on an individual by individual basis and need not be uniform among all Incentive Members. If any Unvested Incentive Share ceases to vest or is cancelled, forfeited, repurchased or otherwise acquired by the LLC prior to vesting, all amounts retained by the LLC pursuant to this Section 10.05(a) on account of such Unvested Incentive Share shall be distributed among the holders of the remaining outstanding Shares pursuant to Section 10.01.

(b) Notwithstanding the provisions set forth in Section 10.01 and Section 10.04, no amount shall be distributed with respect to any particular Incentive Share under Section 10.01 or Section 10.04 unless and until the cumulative amount that would be (or has been) distributed to all Shares pursuant to Section 10.01 and Section 10.04 subsequent to the issuance of such Incentive Share exceeds the amount of such Incentive Share's Participation Threshold and, until such time, the distributions under Section 10.01 and Section 10.04 shall not take into account such Incentive Share (and such amount will be distributed to all other holders of Shares as if such Incentive Share were not outstanding).

## ARTICLE XI. Transfer of Shares

11.01 Transfers by Members

(a) Notice of Transfer. Subject to Section 11.02 below, if any Member (the "***Transferring Member***") proposes to directly sell, assign, exchange, convey, gift, transfer by bequest, devise or otherwise transfer in any manner (a "***Transfer***") all or any portion of his, her or its Shares (the "***Transfer Securities***"), then the Transferring Member shall promptly give written notice (the "***Notice***"), simultaneously to the LLC and to each of the Preferred Members. The Notice shall describe in reasonable detail the proposed Transfer including, without limitation, the number and type of Transfer Securities, the nature of such Transfer, the consideration to be paid, the proposed date of consummation of such Transfer and the name and address of each prospective purchaser or transferee and shall be accompanied by copies of all material proposed agreements relating to such proposed Transfer. In the event that the Transfer is being made pursuant to the provisions of Section 11.02, the Notice shall state under which provision the Transfer is being made. No Transfer of Incentive Shares shall be permitted unless such Transfer is approved by the Board. Any Transfer of Shares in violation of this Article XI shall be deemed invalid, null and void, and of no force or effect.

(b) Right of First Refusal. Except for Transfers permitted by Section 11.02, with respect to any proposed Transfer by the Transferring Member of Transfer Securities, the LLC shall have the right, exercisable upon written notice to the Transferring Member within ten (10) days after the receipt of the Notice, to purchase all or any portion of the Transfer Securities subject to the Notice on the same terms (including the price) and conditions as set forth therein. The LLC's purchase right shall be exercised by written notice signed by an officer of the LLC authorized by the Board and delivered to the Transferring Member proposing to Transfer the Transfer Securities and to each of the other Preferred Members. The LLC shall effect the purchase of such Transfer Securities, including payment of the purchase price, within sixty (60) days after (i) if such Transfer Securities are certificated, such date that the Transferring Member shall deliver to the LLC the certificate(s) (if any) representing the Transfer Securities to be purchased by the LLC, each certificate to be properly endorsed for transfer or (ii) if such Transfer Securities are not certificated, such date of LLC's delivery of exercise notice to the applicable Transferring Member. The Transfer Securities so purchased shall thereupon be cancelled and cease to be issued and outstanding.

(c) Right of Second Refusal.

(i) In the event that the LLC does not elect to purchase all of the Transfer Securities available pursuant to it under Section 11.01(b) within the period set forth therein, the Transferring Member shall give a written notice to the Preferred Members (the "***Second Notice***") that shall set forth the Transfer Securities not purchased by the LLC and that shall include the terms of the Notice set forth in Section 11.01(a). For a period of ten (10) days beginning upon the receipt of the Second Notice, the Preferred Members shall have the right to purchase their *pro rata* share (as determined pursuant to Section 11.01(c)(ii)) of the Transfer Securities subject to the Second Notice on the same terms (including the price) and conditions as set forth therein.

(ii) The *pro rata* share of each Preferred Member shall be equal to the product obtained by multiplying (x) the aggregate number of Transfer Securities covered by the Second Notice and (y) a fraction, the numerator of which is the number of Shares held by such Preferred Member at the time of the Transfer, calculated on an as-converted to Common Share basis, and the denominator of which is the total number of Shares held by all of such Preferred Members at the time of the Transfer, calculated on an as-converted to Common Share basis.

(iii) In the event that not all of the Preferred Members elect to purchase their full *pro rata* share (as determined pursuant to Section 11.01(c)(ii)) of the Transfer Securities available pursuant to their rights under Section 11.01(c)(i) within the time period set forth therein, then the Transferring Member shall promptly give written notice (the "***Oversubscription Notice***") to each of the Preferred Members who has so elected to exercise its full *pro rata* share of the Transfer Securities available pursuant to their rights under Section 11.01(c)(i) (the "***Participating Members***") which Oversubscription Notice shall set forth the Transfer Securities not purchased by the Preferred Members, and shall offer such Participating Members the right to acquire such unsubscribed Transfer Securities. Each Participating Member shall have ten (10) days after receipt of the Oversubscription Notice (the "***Oversubscription Period***") to notify the Transferring Member of its election to purchase all or any portion of the unsubscribed Transfer Securities on the same terms and conditions as set forth in the Second Notice. If the Participating Members elect to

purchase more than the total number of unsubscribed Transfer Securities available for purchase, the number of unsubscribed Transfer Securities to be purchased by each Participating Member shall be proportionately reduced based on such Participating Member's *pro rata* share of the unsubscribed Transfer Securities. Each Participating Members' *pro rata* share for purposes of the immediately preceding sentence shall be equal to the product obtained by multiplying (x) the aggregate number of unsubscribed Transfer Securities covered by the Oversubscription Notice and (y) a fraction, the numerator of which is the number of Shares owned by such Participating Member at the time of the Transfer, calculated on an as-converted to Common Share basis, and the denominator of which is the total number of Shares owned by all of the Participating Members at the time of the Transfer, calculated on an as-converted to Common Share basis. The Participating Members (including the Participating Members who elect to oversubscribe in accordance with this Section 11.01(c)(iii)) shall effect the purchase of the Transfer Securities, including payment of the purchase price, within sixty (60) days after (i) if the Transfer Securities are certificated, such date that the Transferring Member shall deliver to the appropriate Participating Member the certificate(s) (if any) representing the Transfer Securities to be purchased by the Participating Members, each certificate to be properly endorsed for transfer or (ii) if the Transfer Securities are not certificated, the applicable expiration date of such Participating Member's Oversubscription Period.

(d) Sale of Unpurchased Securities.

(i) If the LLC and/or the Preferred Members elect to purchase all of the Transfer Securities that are the subject of the Notice and/or the Second Notice, the Transferring Member shall honor their elections to purchase and consummate the sale or sales of the Transfer Securities on terms set forth in the Notice and/or the Second Notice, as applicable. If the LLC and/or the Preferred Members do not elect to purchase all of the Transfer Securities that are the subject of the Notice and/or the Second Notice or if they elect to purchase all of such Transfer Securities, but such purchases are not consummated at the closings scheduled therefor (such Transfer Securities not so purchased being the "***Unpurchased Securities***"), then the Transferring Member shall be entitled to sell all of such Unpurchased Securities to the proposed third party purchaser pursuant to the terms set forth in the Notice and/or the Second Notice, as applicable, subject to the provisions of Section 11.01(e). Any proposed Transfer to a third party purchaser that is not consummated within sixty (60) days after the later of the expiration of the latest-to-expire ten-day period specified in Section 11.01(c)(i) or (iii), as the case may be, and the ten-day period specified in Section 11.01(e)(i), or any proposed Transfer on terms and conditions more favorable to the proposed transferee than those described in the Notice shall again be subject to the rights of the LLC and the Preferred Members in Section 11.01(b) and Section 11.01(c) (the "***Refusal Rights***") and, if applicable, the rights of the Preferred Members in Section 11.01(e) (the "***Co-Sale Rights***").

(ii) If all or part of the purchase price as stated in the Notice consists of consideration other than cash, then the LLC and the Participating Members shall have the right to purchase the Transfer Securities for cash consideration equal to the sum of the cash consideration, if any, specified in such Notice, plus the fair market value of the non-cash consideration as determined in good faith by the Board.

(e) Right of Co-Sale.

(i) In the event that the LLC and/or the Participating Members do not elect to purchase all of the Transfer Securities pursuant to Sections 11.01(b) and Section 11.01(c), the Transferring Member shall deliver to the LLC and each Preferred Member written notice (the "***Co-Sale Notice***") that each Preferred Member shall have the right, exercisable upon written notice (the "***Co-Sale Response***") to the Transferring Member within ten (10) days after receipt of the Co- Sale Notice, to participate in such Transfer of the Transfer Securities on the same terms and conditions. Such Co-Sale Response shall indicate the number of Shares such holder desires to sell under such holder's right to participate. To the extent one or more of the Preferred Members exercise such right of participation in accordance with the terms and conditions set forth below, the number of Transfer Securities that the Transferring Member may sell in the transaction shall be correspondingly reduced.

(ii) Each Preferred Member may sell all or any part of its Shares equal to the product obtained by multiplying (A) the aggregate number of Transfer Securities covered by the Co-Sale Notice by (B) a fraction the numerator of which is the number of Shares owned by such Preferred Member at the time of the Transfer, calculated on an as-converted to Common Share basis, and the denominator of which is the sum of (1) the number of Common Shares owned by the Transferring Member, calculated on an as-converted to Common Share basis, and (2) the number of Shares owned by all of the electing Preferred Members at the time of the Transfer, calculated on an as-converted to Common Share basis.

(iii) Each Preferred Member who elects to participate in the Transfer pursuant to this Section 11.01(e) shall effect its participation in the Transfer by promptly delivering in escrow to the LLC for transfer on behalf of such holder to the prospective purchaser one or more certificates (if any), properly endorsed for transfer, which represent the number of Shares that such holder elects to sell; *provided*, *however*, that if the Shares are not certificated, then each holder shall effect its participation by delivering written notice to the LLC and the Transferring Member.

(iv) The certificate or certificates (if any) that the Preferred Member delivers to the LLC pursuant to Section 11.01(e)(iii) shall be transferred to the prospective purchaser on consummation of the sale of Transfer Securities pursuant to the terms and conditions specified in the Co-Sale Notice, and the LLC shall concurrently therewith remit to such Preferred Member that portion of the sale proceeds to which such Preferred Member is entitled by reason of its participation in such sale. To the extent that any prospective purchaser or purchasers prohibits such assignment or otherwise refuses to purchase Shares or other securities from another Preferred Member exercising its Co-Sale Rights hereunder, the Transferring Member shall not sell to such prospective purchaser or purchasers any Transfer Securities unless and until, simultaneously with such sale, such Transferring Member shall purchase such Shares or other securities from such Preferred Member on the same terms and conditions specified in the Co-Sale Notice.

(v) The exercise or non-exercise of the rights of the Preferred Members hereunder to participate in one or more Transfers of Transfer Securities made by the Transferring Member shall not adversely affect their rights to participate in subsequent Transfers of Shares.

(vi) If none of the Preferred Members elects to participate in the sale of Transfer Securities subject to the Co-Sale Notice, the Transferring Member may, not later than thirty (30) days following delivery to the LLC of the Co-Sale Notice, enter into an agreement providing for the closing of the Transfer of the Transfer Securities covered by the Co-Sale Notice within ten (10) days of such agreement on terms (including the price) and conditions not more favorable to the transferor than those described in the Co-Sale Notice. Any proposed Transfer on terms and conditions more favorable to the proposed transferor than those described in the Co- Sale Notice, as well as any subsequent proposed Transfer of any Shares by the Transferring Member, shall again be subject to the Co-Sale Rights of the Preferred Members and shall require compliance by the Transferring Member with the procedures described in this Section 11.01(e).

(vii) Any participating Preferred Member may withdraw from exercising such participating Preferred Member's right of co-sale under this Section 11.01(e) in connection with a proposed Transfer at any time prior to the consummation of such Transfer, in which case the number of Transfer Securities that the Transferring Member may sell in the proposed Transfer shall be correspondingly increased to give effect to the non-participation of such Preferred Member.

(viii) Subject to Section 11.01(e)(ix), the aggregate consideration payable to the participating Preferred Members and the Transferring Member shall be allocated based on the number of Transfer Securities sold to the prospective transferee by each participating Preferred Member and the Transferring Member.

(ix) In the event that the proposed Transfer constitutes a Deemed Liquidation Event, the terms of the agreement related to such Transfer shall provide that the aggregate consideration from such Transfer shall be allocated to the participating Preferred Members in accordance with Section 10.04(b).

(f) Termination. The rights and obligations set forth in this Section 11.01 shall not apply in connection with, and shall immediately terminate upon, the earlier of the date of the closing of (i) any sale of Transfer Securities to the public in an offering pursuant to an effective registration statement under the Securities Act (a "***Public Offering***") or (ii) a Deemed Liquidation Event.

11.02 Transfers Generally; Permitted Transfers and Prohibited Transferees

(a) Transfers Generally. Subject to compliance with this Agreement and applicable law, Shares may be transferred on the books of the LLC by the surrender to the LLC or its transfer agent of the certificate therefor (if a certificate has been issued in respect thereof) properly endorsed or accompanied by a written assignment or power of attorney properly executed or, in the case of uncertificated Shares, a written assignment or power of attorney properly executed, in each case, with transfer stamps (if necessary) affixed, and with such proof of the authenticity of signature as the LLC or its transfer agent may reasonably require. Prior to any proposed Transfer of Shares (other than pursuant to an effective registration statement in accordance with the Securities Act), the holder thereof shall give written notice to the LLC of its intention to effect such Transfer. Each such notice shall describe the manner of the proposed Transfer and, if requested by the LLC, shall be accompanied by an opinion of counsel reasonably

satisfactory to the LLC to the effect that the proposed Transfer may be effected without registration under the Securities Act and any applicable state securities laws, whereupon, subject to compliance with the other terms and conditions set forth in this Agreement, the holder of such Shares shall be entitled to Transfer such Shares in accordance with the terms of its notice; provided, however, that no such opinion of counsel shall be required for a Transfer in connection with a Sale of the LLC. Each certificate (if any) representing Shares Transferred as above provided shall bear the legends set forth in Section 3.12, except that such certificate shall not bear such legend if (i) such Transfer is in accordance with the provisions of Rule 144 (or any other rule permitting public sale without registration under the Securities Act) or (ii) the opinion of counsel referred to above is to the further effect that the transferee and any subsequent transferee (other than an Affiliate of the LLC) would be entitled to Transfer such Shares in a public sale without registration under the Securities Act. Notwithstanding anything to the contrary herein, the LLC shall not recognize any Transfer if, in the opinion of counsel to the LLC, such Transfer would result in the LLC being considered a "publicly traded partnership" under Section 7704 of the Code or would otherwise result in the LLC being classified for federal income tax purposes as an association taxable as a corporation.

(b) Permitted Transfers. Notwithstanding the foregoing, the Refusal Rights and the Co-Sale Rights in Section 11.01 shall not apply to (a) any Transfer by a Member to any parent, spouse, descendant (whether natural or adopted) or sibling of, or trust or other vehicle formed solely for the benefit of and controlled by, such Member and/or any one or more of them or any Affiliate, partner, member, stockholder or other equity holder of such Member, (b) any pledge of Shares made by a Member pursuant to a bona fide loan transaction that creates a mere security interest, (c) any bona fide gift by a Member, (d) any repurchase of Shares from a Member by the LLC or (e) any Transfer by a Preferred Member to (i) any of such Preferred Member's officers, directors, partners, members or other equity owners, or retired partners, retired members or other retired equity owners, or to the estate of any of such Preferred Member's partners, members or other equity owners or retired partners, retired members or other retired equity owners or (ii) any venture capital fund, private investment vehicle or similar entity that is controlled by or under common control with one or more general partners, managers, or ultimate beneficial owner, or managing members of, or shares the same management company with, such Preferred Member; *provided* that the transferee shall furnish the LLC and such holders with a written agreement to be bound by and comply with all provisions of this Agreement; and, *provided*, *further*, in the case of any Transfer pursuant to clause (a) or (c) above, that such Transfer is made pursuant to a transaction in which there is no consideration actually paid for such Transfer. Notwithstanding anything to the contrary herein, the provisions of Section 11.01 shall not apply to the sale of any Shares to the public in a Public Offering.

(c) Prohibited Transferees. Notwithstanding the foregoing, no Member shall transfer any Transfer Securities to (i) any entity which, in the determination of the Board, directly or indirectly competes with the LLC or any of its subsidiaries; or (ii) any customer, distributor or supplier of the LLC, if the Board should determine that such transfer would result in such customer, distributor or supplier receiving information that would place the LLC or its subsidiaries at a competitive disadvantage with respect to such customer, distributor or supplier. It being agreed that none of Canaan, Atlas, Access, RA Capital, Viking Global Opportunities Illiquid Investments Sub-Master LP, Janus Henderson Global Life Sciences Fund and Janus Henderson Capital Funds Plc-Janus Henderson Global Life Sciences Fund, Perceptive Life Sciences Master Fund, Ltd., Franklin Strategic Series – Franklin Biotechnology Discovery Fund, Boxer Capital, LLC, or MVA Investors, LLC shall be deemed to directly or indirectly compete with the LLC or any of its subsidiaries.

11.03 Drag-Along Right

(a) Definitions. A "***Sale of the LLC***" shall mean either: (i) a transaction or series of related transactions in which a person, or a group of related persons, acquires Shares from the Members representing more than fifty percent (50%) of the outstanding voting power of the LLC (a "***Share Sale***"); or (ii) a transaction that qualifies as a Deemed Liquidation Event.

(b) Actions to be Taken. In the event that (i) any time on or after the fifth (5th) anniversary of the date of this Agreement the Required Holders or (ii) any time prior to the fifth (5th) anniversary of the date of this Agreement, (x) the Required Holders and (y) the Board, in either such case, approve a Sale of the LLC in writing, specifying that this Section 11.03 shall apply to such transaction, then, subject to satisfaction of each of the conditions set forth in 11.03(c) below, each Member and the LLC hereby agrees:

(i) if such transaction requires Member approval, with respect to all Shares that such Member owns or over which such Member otherwise exercises voting power, to vote (in person, by proxy or by action by written consent, as applicable) all Shares in favor of, and adopt, such Sale of the LLC (together with any related amendment or restatement to this Agreement required to implement such Sale of the LLC) and to vote in opposition to any and all other proposals that could delay or impair the ability of the LLC to consummate such Sale of the LLC;

(ii) if such transaction is a Share Sale, to sell the same proportion of shares of the LLC beneficially held by such Member as is being sold by the Required Holders to the person to whom the Required Holders propose to sell their Shares;

(iii) to execute and deliver all related documentation and take such other action in support of the Sale of the LLC as shall reasonably be requested by the LLC or the Required Holders (in each such case, whether before or after the consummation of the Sale of the LLC) in order to carry out the terms and provision of this Section 11.03, including, without limitation, executing and delivering instruments of conveyance and transfer, and any purchase agreement, merger agreement, any associated indemnity agreement, or escrow agreement, any associated voting, support, or joinder agreement, consent, waiver, governmental filing, share certificates duly endorsed for transfer (free and clear of impermissible liens, claims and encumbrances), and any similar or related documents;

(iv) not to deposit, and to cause their Affiliates not to deposit, except as provided in this Agreement, any Shares of the LLC owned by such party or Affiliate in a voting trust or subject any Shares to any arrangement or agreement with respect to the voting of such Shares, unless specifically requested to do so by the acquirer in connection with the Sale of the LLC;

(v) to affirmatively waive any and all dissenters and appraisal rights that such Member may have under applicable law in connection with a Sale of the LLC (whether before or after the consummation of the Sale of the LLC) and to refrain from (i) exercising any dissenters' rights or rights of appraisal under applicable law at any time with respect to such Sale of the LLC and (ii) asserting any claim or commencing any suit (x) challenging the Sale of the LLC or this Agreement, or (y) alleging a breach of any fiduciary duty of the Required Holders or any affiliate or associate thereof (including, without limitation, aiding and abetting breach of fiduciary duty) in connection with the evaluation, negotiation or entry into the Sale of the LLC, or the consummation of the transactions contemplated thereby;

(vi) if the consideration to be paid in exchange for the Shares pursuant to this Section 11.03 includes any securities and due receipt thereof by any Member would require under applicable law (x) the registration or qualification of such securities or of any person as a broker or dealer or agent with respect to such securities; or (y) the provision to any Member of any information other than such information as a prudent issuer would generally furnish in an offering made solely to "accredited investors" as defined in Regulation D promulgated under the Securities Act, the LLC may cause to be paid to any such Member in lieu thereof, against surrender of the Shares which would have otherwise been sold by such Member, an amount in cash equal to the fair value (as determined in good faith by the Board) of the securities which such Member would otherwise receive as of the date of the issuance of such securities in exchange for the Shares; and

(vii) in the event that the Required Holders, in connection with such Sale of the LLC, appoint a Member representative (the "***Member Representative***") with respect to matters affecting the Members under the applicable definitive transaction agreements following consummation of such Sale of the LLC, (A) to consent to (1) the appointment of such Member Representative, (2) the establishment of any applicable escrow, expense or similar fund in connection with any indemnification or similar obligations, and (3) the payment of such Member's pro rata portion (from the applicable escrow or expense fund or otherwise) of any and all reasonable fees and expenses to such Member Representative in connection with such Member Representative's services and duties in connection with such Sale of the LLC and its related service as the representative of the Members, and (B) not to assert any claim or commence any suit against the Member Representative or any other Member with respect to any action or inaction taken or failed to be taken by the Member Representative, within the scope of the Member Representative's authority, in connection with its service as the Member Representative, absent fraud, bad faith, gross negligence or willful misconduct.

(c) Conditions. Notwithstanding anything to the contrary set forth herein, a Member will not be required to comply with Section 11.03(b) above in connection with any proposed Sale of the LLC (the "***Proposed Sale***"), unless:

(i) any representations and warranties to be made by such Member in connection with the Proposed Sale are limited to representations and warranties related to authority, ownership and the ability to convey title to such Shares, including, but not limited to, representations and warranties that (i) the Member holds all right, title and interest in and to the Shares such Member purports to hold, free and clear of all liens and encumbrances, (ii) the obligations of the Member in connection with the transaction have been duly authorized, if applicable, (iii) the documents to be entered into by the Stockholder have been duly executed by the Member and delivered to the acquirer and are enforceable (subject to customary limitations) against the Member in accordance with their respective terms; and (iv) neither the execution and delivery of documents to be entered into by the Member in connection with the transaction, nor

the performance of the Member's obligations thereunder, will cause a breach or violation of the terms of any agreement to which the Member is a party, or any law or judgment, order or decree of any court or governmental agency that applies to the Member such Member is not required to agree (unless such Member is a LLC officer or employee) to any restrictive covenant in connection with the Proposed Sale (including without limitation any covenant not to compete or covenant not to solicit customers, employees or suppliers of any party to the Proposed Sale);

(ii) such Member and its affiliates are not required to amend, extend or terminate any contractual or other relationship with the LLC, the acquirer or their respective affiliates, except that the Member may be required to agree to terminate the investment-related documents between or among such Member, the LLC and/or other Members of the LLC;

(iii) the Member is not liable for the breach of any representation, warranty or covenant made by any other Person in connection with the Proposed Sale, other than the LLC (except to the extent that funds may be paid out of an escrow established to cover breach of representations, warranties and covenants of the LLC as well as breach by any Member of any identical representations, warranties and covenants provided by all Members);

(iv) the liability for indemnification, if any, of such Member in the Proposed Sale will be limited to the amount of consideration paid and payable to such Member in connection with such Proposed Sale, except with respect to claims related to fraud by such Member, the liability for which need not be limited as to such Member; and

(v) upon the consummation of the Proposed Sale (i) each holder of each class or series of the Shares of the LLC will receive the same form of consideration for their Shares of such class or series as is received by other holders in respect of their Shares of such same class or series of Shares, (ii) each holder of Series B Convertible Preferred Shares or Series A Convertible Preferred Shares will receive the same amount of consideration per Series B Convertible Preferred Share or Series A Convertible Preferred Share, as applicable, as is received by other holders in respect of their Series B Convertible Preferred Shares or Series A Convertible Preferred Shares, as applicable,, (iii) each holder of Common Shares will receive the same amount of consideration per Common Share as is received by other holders in respect of their Common Shares, (iv) each holder of Incentive Shares will receive the same amount of consideration per Incentive Share as is received by other holders in respect of their Incentive Shares, and (v) unless waived pursuant to the terms of this Agreement and as may be required by law, the aggregate consideration receivable by all holders of the Shares shall be allocated among the holders of Preferred Shares, Common Shares and Incentive Shares on the basis of the relative liquidation preferences to which the holders of each respective series of Preferred Shares, the holders of Common Shares and the holders of Incentive Shares are entitled in a Deemed Liquidation Event (assuming for this purpose that the Proposed Sale is a Deemed Liquidation Event) in accordance with this Agreement; provided, however, that, notwithstanding the foregoing provisions of this Section 11.03(c)(v), if the consideration to be paid in exchange for the Shares held by a Member pursuant to this Section 11.03(c)(v) includes any securities and due receipt thereof by any Member would require under applicable law (x) the registration or qualification of such securities or of any person as a broker or dealer or agent with respect to such securities; or (y) the provision to any Member of any information other than such information as a prudent issuer would generally furnish in an offering made solely to "accredited investors" as defined in Regulation D

promulgated under the Securities Act, the LLC may cause to be paid to any such Member in lieu thereof, against surrender of the Shares held by such Member which would have otherwise been sold by such Member, an amount in cash equal to the fair value (as determined in good faith by the Board) of the securities which such Member would otherwise receive as of the date of the issuance of such securities in exchange for the Shares held by such Member.

(d) Restrictions on Sales of Control of the LLC. No Member shall be a party to any Share Sale unless (a) all holders of Preferred Shares are allowed to participate in such transaction(s) and (b) the consideration received pursuant to such transaction is allocated among the parties thereto in the manner specified in this Agreement (as if such transaction(s) were a Deemed Liquidation Event), unless the Required Holders elect to allocate the consideration differently by written notice given to the LLC at least ten (10) days prior to the effective date of any such transaction or series of related transactions.

(e) Irrevocable Proxy and Power of Attorney. Each party to this Agreement hereby constitutes and appoints as the proxies of the party and hereby grants a power of attorney to the President or Chief Executive Officer of the LLC, and a designee of the Required Holders, and each of them, with full power of substitution, with respect to the matters set forth herein, including, without limitation, election of persons as members of the Board in accordance with Section 4.02 hereto, votes to increase authorized shares pursuant to Section 3.02(c) hereof and votes regarding any Sale of the LLC pursuant to this Section 11.03, and hereby authorizes each of them to represent and vote, if and only if the party (i) fails to vote, or (ii) attempts to vote (whether by proxy, in person or by written consent), in a manner which is inconsistent with the terms of this Agreement, all of such party's Shares in favor of the election of persons as members of the Board determined pursuant to and in accordance with the terms and provisions of this Agreement or the increase of authorized shares or approval of any Sale of the LLC pursuant to and in accordance with the terms and provisions of Section 3.02(c) and this Section 11.03, respectively, or to take any action reasonably necessary to effect Section 3.02(c) and this Section 11.03, respectively. The power of attorney granted hereunder shall authorize the President or Chief Executive Officer of the LLC to execute and deliver the documentation referred to in Section 11.03(b)(iii) on behalf of any party failing to do so within five (5) business days of a request by the LLC. Each of the proxy and power of attorney granted pursuant to this this Section 11.03(e) is given in consideration of the agreements and covenants of the LLC and the parties in connection with the transactions contemplated by this Agreement and, as such, each is coupled with an interest and shall be irrevocable unless and until this Agreement terminates or the upon the closing of the LLC's initial Public Offering or a Deemed Liquidation Event. Each party hereto hereby revokes any and all previous proxies and powers of attorney with respect to the Shares and shall not hereafter, unless and until this Agreement terminates, purport to grant any other proxy or power of attorney with respect to any of the Shares, deposit any of the Shares into a voting trust or enter into any agreement (other than this Agreement), arrangement or understanding with any person, directly or indirectly, to vote, grant any proxy or power of attorney or give instructions with respect to the voting of any of the Shares, in each case, with respect to any of the matters set forth herein.

11.04 **Tax Efficient Transaction**. If the LLC, the Required Holders and/or the Board decide to consummate an initial Public Offering or Sale of the LLC (an "**Exit Event**"), the LLC shall use reasonable best efforts to structure such an Exit Event in a tax-efficient manner from a U.S. tax perspective for the Members as a whole, including, without limitation, effecting such tax- free mergers, contributions to capital and other transactions as are reasonable and commercially practicable that enable the Members and their equity owners to receive equity interests in the entity effecting the Exit Event in a tax-free transaction from a U.S. tax perspective.

11.05 Termination

The rights and obligations set forth in this Article XI shall immediately terminate upon the closing of the LLC's initial Public Offering; *provided*, that that the provisions of Section hereof will continue after the closing of any Sale of the LLC to the extent necessary to enforce the provisions of Section 11.03 with respect to such Sale of the LLC.

## ARTICLE XII. Dissolution, Liquidation, and Termination

12.01 Dissolution

Subject to Section 2.05, the LLC shall dissolve and its affairs shall be wound up upon the earliest to occur of the following:

(a) the written consent of the Board and the Required Holders;

(b) the consummation of a Deemed Liquidation Event; and

(c) the entry of a decree of judicial dissolution under the Act.

The LLC shall not dissolve or be terminated upon the death, retirement, resignation, expulsion, bankruptcy or dissolution of any Member. The LLC shall promptly notify the Members of the dissolution of the LLC.

12.02 Liquidation

Upon dissolution of the LLC, the Board shall act as its liquidating trustee or the Board may appoint one or more Managers or Members as liquidating trustee. The liquidating trustee shall proceed diligently to liquidate the LLC, to wind up its affairs and to make final distributions as provided in Section 10.04 and in the Act. The costs of dissolution and liquidation shall be an expense of the LLC. Until final distribution, the liquidating trustee may continue to operate the business and properties of the LLC with all of the power and authority of the Board. As promptly as possible after dissolution and again after final liquidation, the liquidating trustee shall cause an accounting by a firm of independent public accountants of the LLC's assets, liabilities, operations and liquidating distributions to be given to the Members.

12.03 Termination

Upon completion of the distribution of LLC assets as provided herein, the LLC shall be terminated, and the Board (or such other person or persons as the Act may require or permit) shall take such other actions as may be necessary to terminate the existence of the LLC.

12.04 Right to Convert to Corporate Form

Notwithstanding anything to the contrary set forth herein, and without any need for consent or approval of any Member other than the prior written consent of the Required Holders, and without provision for any dissenters, appraisal or similar rights (each of which is hereby waived), the Board may, at any time by not less than ten (10) days' prior written notice given to all Members, cause the LLC to convert to one or more corporations, by such means (including, without limitation, merger or consolidation or other business combination; transfer of all or a part of the LLC's assets; and/or transfer of the Members' respective Shares) as the Board may reasonably select. Upon such conversion in accordance with this Section 12.04:

(a) The Shares of each Member shall be exchanged for, or otherwise converted into, shares of capital stock of such corporation or corporations representing an equity interest therein equivalent to such Member's equity interest in the LLC (including, without limitation, having the same liquidation preferences, conversion rights, preferred return rights and voting rights) but without any right to tax distributions as contemplated by Section 10.03; *provided*, that the LLC and the Members, in their capacity as Members of the LLC (or stockholders of such converted corporation, as applicable) further agree (i) to effect such a conversion in a manner that is intended to qualify for tax-deferred exchange treatment under Section 351 and/or 368 of the Code (a "**Tax-Free Combination**"), (ii) the LLC and the Members (or stockholders of such converted corporation) will not take any inconsistent position for financial reporting purposes or on any tax return filed with any governmental authority with respect to the foregoing and (iii) the LLC shall provide to the other parties such information, reports, returns and schedules as may reasonably be required to assist such party in accounting or reporting the transaction as being qualified as a tax-deferred exchange;

(b) The stockholders of such corporation or corporations, and such corporation or corporations, shall enter into a stockholders agreement incorporating the terms of this Agreement and the Rights Agreement; and

(c) Each person that is now or hereafter becomes a Member of the LLC by execution of this Agreement, an amendment hereto or an instrument acknowledging that such person is bound hereby, irrevocably constitutes and appoints the Chief Executive Officer of the LLC and any person designated by the Chief Executive Officer of the LLC to act on its behalf for the purposes of this Section 12.04, and each of them acting singly, such person's true and lawful agent and attorney-in-fact with full power and authority in such person's name, place and stead to execute, acknowledge, deliver, swear to, file and record at the appropriate public offices any and all agreements, instruments and other documents (including, without limitation, the organizational documents of the corporation or corporations into which the LLC may be converted as contemplated by this Section 12.04, the agreements among the stockholders of such corporation or corporations and/or such corporation or corporations referred to in this Section 12.04, and instruments of assignment and transfer assigning the assets of the LLC or the Members' respective Shares in the LLC, as the case may be, to such corporation or corporations in order to effectuate such conversion as contemplated by this Section 12.04) as are necessary or appropriate, in the reasonable opinion of the Chief Executive Officer of the LLC or such person designated by it, to implement and effectuate the provisions of this Section 12.04, which the power of attorney is hereby agreed and acknowledged to be irrevocable and coupled with an interest, in recognition of

the fact that President of the LLC will be relying upon the power to act as contemplated by this Section 12.04 in connection with the conversion of the LLC into a corporation or corporations and the other matters contemplated by this Section 12.04, and shall survive any death, retirement, resignation, withdrawal, expulsion, removal, bankruptcy, dissolution or adjudication of incompetence or insanity of any Member until such time as the provisions of this Section 12.04 have been implemented and effectuated to the reasonable satisfaction of the LLC.

## ARTICLE XIII. General Provisions

13.01 Offset

Whenever the LLC is obligated to make a distribution or payment to any Member, any amounts that such Member owes the LLC may be deducted from said distribution or payment by the LLC.

13.02 Notices

Except as expressly set forth to the contrary in this Agreement, all notices, requests, or consents required or permitted to be given under this Agreement must be in writing and shall be deemed to have been given (a) three (3) days after the date mailed by registered or certified mail, addressed to the recipient, with return receipt requested, (b) upon delivery to the recipient in person or by courier, or (c) upon receipt of a facsimile or electronic mail transmission by the recipient. Such notices, requests and consents shall be given (i) to Members at their addresses, fax numbers or electronic mail addresses on Schedule A attached hereto, or such other address, fax number or electronic mail address as a Member may specify by notice to the LLC and to all of the other Members, or (ii) to the LLC at the address of the principal office of LLC specified in Section 1.05 or such other address or fax numbers as the LLC may specify by notice to the Members. Whenever any notice is required to be given by law, the Certificate of Formation or this Agreement, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

13.03 Entire Agreement

This Agreement constitutes the entire agreement of the LLC and the Members relating to the subject matter of this Agreement and supersedes all prior contracts or agreements with respect to the subject matter of this Agreement, whether oral or written, including, without limitation, the Prior Agreement. There are no representations, agreements, arrangements, or understandings, oral or written, between or among the parties hereto relating to the subject matter of this Agreement which are not fully expressed in this Agreement, the Purchase Agreement or the Rights Agreement.

13.04 Consent to Jurisdiction

The parties to this Agreement hereby consent to the exclusive jurisdiction of the federal and state courts of the State of Delaware in connection with any matter or dispute arising under this Agreement or between them regarding the affairs of the LLC and waive any objection they may have to such jurisdiction or to the venue of any such matter or dispute and any claim that such matter or dispute has been brought in an inconvenient forum. Effective service of process

may be made upon any Member pursuant to the notice provisions of Section 13.02. To the fullest extent permitted by law, and as separately bargained-for-consideration, each party hereby waives any right to trial by jury in any action, suit, proceeding or counterclaim of any kind arising out of or relating to this Agreement.

13.05 Amendment or Modification

Any term of this Agreement may be amended or modified and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), at any time and from time to time, by a written instrument signed by the (a) LLC and (b) the Required Holders; *provided* that (i) any amendment to, or termination or waiver of, this Section 13.05(i) or Section 4.02(b) that would adversely affect the rights of Canaan to designate or remove the Canaan Manager shall also require the prior written consent of Canaan, (ii) any amendment to, or termination or waiver of, this Section 13.05(ii) or Section 4.02(b) that would adversely affect the rights of Atlas to designate or remove the Atlas Manager shall also require the prior written consent of Atlas, (iii) any amendment to, or termination or waiver of, this Section 13.05(iii) or Section 4.02(b) that would adversely affect the rights of Access to designate or remove the Access Manager shall also require the prior written consent of Access, (iv) any amendment to, or termination or waiver of, this Section 13.05(iv) or Section 4.02(b) that would adversely affect the rights of RA Capital to designate or remove the RA Manager shall also require the prior written consent of RA Capital, (v) Section 11.02(c) and this Section 13.05(v) may only be amended or modified as it relates to the Investors named therein with the prior consent of such Investors; (vi) this Agreement may not be amended, modified or terminated and the observance of any term hereunder may not be waived with respect to any holder of any series of Preferred Shares without the written consent of such holder unless such amendment, modification, termination or waiver applies to all such holders in the same fashion,

(vii) any provision hereof may be waived by any waiving party on such party's own behalf, without the consent of any other party and (viii) this Agreement may be amended, without the consent of any other party, to add an Incentive Member as a party to this Agreement and to reflect such Incentive Member and such Incentive Member's Incentive Shares on Schedule A attached hereto in connection with any issuance of Incentive Shares to such Incentive Member. Any amendment or waiver effected in accordance with this Section 13.05 shall be binding upon the LLC and each of the Members and their respective successors and permitted assigns, whether or not any such party, successor or assignee entered into or approved such amendment, termination or waiver.

13.06 Binding Effect

Subject to the restrictions on Transfers set forth in this Agreement, this Agreement is binding on and inures to the benefit of the parties and their respective heirs, legal representatives, successors and permitted assigns.

13.07 Governing Law; Severability

This Agreement is governed by and shall be construed in accordance with the law of the State of Delaware, exclusive of its conflict-of-laws principles. In the event of a conflict between the provisions of this Agreement and any provision of the Certificate of Formation or the Act, the applicable provision of this Agreement shall control, to the extent permitted by law. If any provision of this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision shall be enforced to the fullest extent permitted by law.

13.08 Further Assurances

In connection with this Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions, as requested by the Board.

13.09 Waiver of Certain Rights

Each Member irrevocably waives any right it may have to maintain any action for dissolution of the LLC or for partition of the property of the LLC. The failure of any Member to insist upon strict performance of a covenant hereunder or of any obligation hereunder, irrespective of the length of time for which such failure continues, shall not be a waiver of such Member's right to demand strict compliance herewith in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation hereunder, shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation hereunder.

13.10 Notice to Members of Provisions of this Agreement

By executing this Agreement, each Member acknowledges that such Member has actual notice of (a) all of the provisions of this Agreement and (b) all of the provisions of the Certificate of Formation. Each Member hereby agrees that this Agreement constitutes adequate notice of all such provisions, and each Member hereby waives any requirement that any further notice thereunder be given.

13.11 Third Party Beneficiaries

Except as otherwise expressly set forth herein, the provisions of this Agreement are not intended to be for the benefit of any creditor or other person to whom any debts or obligations are owed by, or who may have any claim against, the LLC or any of its Members or the Managers, except for Members or the Managers in their capacities as such. Notwithstanding any contrary provision of this Agreement, no such creditor or person shall obtain any rights under this Agreement or shall, by reason of this Agreement, be permitted to make any claim against the LLC or any Member or the Managers.

13.12 Interpretation

For the purposes of this Agreement, terms not defined in this Agreement shall be defined as provided in the Act. The term "***person***" as used in this Agreement shall include individuals, partnerships, corporations, trusts, limited liability companies and other entities of whatever nature. Titles or captions of Articles and Sections contained in this Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope

of this Agreement or the intent of any provision hereof. The terms of this Agreement have been negotiated by the parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this Agreement. No rule or strict construction will be applied against any party hereto. In this Agreement, unless a clear intention appears otherwise: (a) the singular number includes the plural number and vice versa; (b) reference to any person includes such person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (c) reference to any gender includes each other gender; (d) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof; (e) reference to any law means such law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder; (f) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular section or other provision hereof; (g) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; (h) "or" is used in the inclusive sense of "and/or"; (i) with respect to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding"; (j) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, schedules or amendments thereto; and (k) section references shall be deemed to refer to all subsections thereof, unless otherwise expressly indicated.

13.13 Counterparts

This Agreement may be executed in any number of counterparts with the same effect as if all parties had signed the same document, and all counterparts shall be construed together and shall constitute the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, www.docusign.com) or other transmission method an any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

13.14 Attorneys' Fees

If any party to this Agreement shall bring any action, suit, counterclaim or appeal for any relief against another party to this Agreement, declaratory or otherwise, to enforce the terms hereof or to declare rights hereunder (collectively, an "***Action***"), the losing party shall pay to the prevailing party the amount of all reasonable attorneys' fees and costs incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling or award (collectively, a "***Decision***") granted therein, all of which shall be deemed to have accrued on the commencement of such Action and shall be paid whether or not such Action is prosecuted to a Decision. Any Decision entered in such Action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such Decision. "Prevailing party" within the meaning of this Section 13.14 includes, without limitation, a party that agrees to dismiss an Action on the other party's payment of the sums allegedly due or performance of the covenants allegedly breached or that obtains substantially the relief sought by it.

13.15 Prior Agreement

Upon the execution hereof by the LLC and the Existing Members, this Agreement shall amend, restate and supersede the Prior Agreement, such that the Prior Agreement shall be of no further force or effect.

*[Signatures on following pages]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**LLC:**

**DAY ONE BIOPHARMACEUTICALS HOLDING COMPANY, LLC**

By: /s/ Jeremy Bender
Name: Jeremy Bender
Title: Chief Executive Officer

*[Signature Page to Amended and Restated Operating Agreement]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**MEMBERS:**

**JANUS HENDERSON GLOBAL LIFE SCIENCES FUND**

By: Janus Capital Management LLC, its investment advisor

By: /s/ Andrew Acker
Name: Andrew Acker
Title: Authorized Signatory

**JANUS HENDERSON CAPITAL FUNDS PLC ON BEHALF OF ITS SERIES JANUS HENDERSON GLOBAL LIFE SCIENCES FUND**

By: Janus Capital Management LLC, its investment advisor

By: /s/ Andrew Acker
Name: Andrew Acker
Title: Authorized Signatory

Email:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**MEMBER:**

**T. ROWE PRICE NEW HORIZONS FUND, INC.**
**T. ROWE PRICE NEW HORIZONS TRUST**
**T. ROWE PRICE U.S. EQUITIES TRUST**
**MASSMUTUAL SELECT FUNDS - MASSMUTUAL SELECT T. ROWE PRICE SMALL AND MID CAP BLEND FUND**
Each account, severally and not jointly

By: T. Rowe Price Associates, Inc., Investment Adviser or Subadviser, as applicable

By: /s/ Andrew Baek
Name: Andrew Baek
Title: Vice President

Address:

Phone:
E-mail:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**MEMBER:**

**T. ROWE PRICE HEALTH SCIENCES FUND, INC.**
**TD MUTUAL FUNDS—TD HEALTH SCIENCES FUND**
**T. ROWE PRICE HEALTH SCIENCES PORTFOLIO**
Each account, severally and not jointly

By: T. Rowe Price Associates, Inc., Investment Adviser or Subadviser, as applicable

By: /s/ Andrew Baek
Name: Andrew Baek
Title: Vice President

Address:

Phone:
E-mail:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**INVESTOR:**

**FRANKLIN STRATEGIC SERIES - FRANKLIN BIOTECHNOLOGY DISCOVERY FUND**
By: Franklin Advisers, Inc., its investment manager

By: /s/ Evan McCulloch
Name: Evan McCulloch
Title: Vice President

*[Signature Page to Amended and Restated Operating Agreement]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**MEMBER:**

**ATLAS VENTURE FUND XI, L.P.**

By: Atlas Venture Associates XI, L.P.,
Its: General Partner

By: Atlas Venture Associates XI, LLC,
Its: General Partner

By: /s/ Ommer Chohan
Name: Ommer Chohan
Title: CFO

Address:

*[Signature Page to Amended and Restated Operating Agreement]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**MEMBER**:

**ATLAS VENTURE OPPORTUNITY FUND I, L.P.**

By: Atlas Venture Associates Opportunity I, L.P., its General Partner

By: Atlas Venture Associates Opportunity I, LLC, its General Partner

By: /s/ Ommer Chohan
Name: Ommer Chohan
Title: CFO

Address:

*[Signature Page to Amended and Restated Operating Agreement]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**MEMBERS:**

**BOXER CAPITAL, LLC**

By: /s/ Aaron Davis
Name: Aaron Davis
Title: Chief Executive Officer

**MVA INVESTORS, LLC**

By: /s/ Aaron Davis
Name: Aaron Davis
Title: Chief Executive Officer

*[Signature Page to Amended and Restated Operating Agreement]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**MEMBER:**

**VIKING GLOBAL OPPORTUNITIES ILLIQUID INVESTMENTS SUBMASTER LP**

**By: Viking Global Opportunities Portfolio GP LLC, its general partner**

By: /s/ Katerina Novak
Name: Katerina Novak
Title: Authorized Signatory

Address:

*[Signature Page to Amended and Restated Operating Agreement]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**MEMBER**:

**PERCEPTIVE LIFE SCIENCES MASTER FUND, LTD.**

By: Perceptive Advisors, LLC

By: /s/ James H. Mannix
Name: James H. Mannix
Title: Chief Operating Officer

*[Signature Page to Amended and Restated Operating Agreement]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**MEMBER**:

**AI DAY1 LLC**

By: Access Industries Management, LLC,
Its: Manager

By: /s/ Alejandro Moreno
Name: Alejandro Moreno
Title: Executive Vice President

By: Suzette Del Giudice
Name: Suzette Del Giudice
Title: Executive Vice President

*[Signature Page to Amended and Restated Operating Agreement]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**MEMBER**:

/s/ Julie Papanek Grant
Julie Papanek Grant

*[Signature Page to Amended and Restated Operating Agreement]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**MEMBER**:

/s/ Samuel Blackman
Samuel Blackman

*[Signature Page to Amended and Restated Operating Agreement]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**MEMBERS:**

**BIOTECHNOLOGY VALUE FUND, L.P.**

By: BVF I GP LLC, its General Partner

By: /s/ Mark Lampert
Name: Mark Lampert
Title: Chief Executive Officer
Address:

**BIOTECHNOLOGY VALUE FUND II, L.P.**

By: BVF II GP LLC, its General Partner

By: /s/ Mark Lampert
Name: Mark Lampert
Title: Chief Executive Officer
Address:

**BIOTECHNOLOGY VALUE TRADING FUND OS, L.P.**

By: BVF Partners OS Ltd., its General Partner

By: BVF Partners L.P., its Sole Member

By: BVF Inc., its General Partner

By: /s/ Mark Lampert
Name: Mark Lampert
Title: President
Address:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**MEMBER**:

RA Capital Healthcare Fund, L.P.

By: RA Capital Healthcare Fund GP, LLC
Its General Partner

By: /s/ Peter Kolchinsky
Name: Peter Kolchinsky
Title: Manager

RA Capital NEXUS Fund II, L.P.

By: RA Capital Nexus Fund II GP, LLC
Its General Partner

By: /s/ Peter Kolchinsky
Name: Peter Kolchinsky
Title: Manager

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**MEMBER**:

**LOGOS OPPORTUNITIES FUND II, L.P.**

By: Logos Opportunities GP, LLC Its General Partner

By: /s/ Graham Walmsley
Name: Graham Walmsley
Title: Managing Member

Address:

By: /s/ Arsani William
Name: Arsani William
Title: Managing Partner

Address:

*[Signature Page to Amended and Restated Operating Agreement]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**MEMBER**:

**CANAAN XI L.P.**

By: Canaan Partners XI LLC, its General Partner

By: /s/ Tim Shannon
Name: Dr. Tim Shannon
Title: Manager/Member

*[Signature Page to Amended and Restated Operating Agreement]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**MEMBER**:

**CANAAN 2020+ CO-INVESTMENT L.P.**

By: Canaan Partners 2020+ Co-Investment LLC,
as General Partner

By: Canaan Management LLC, its Manager

By: /s/ John J. Pacifico
Name: John J. Pacifico
Title: Chief Operating Officer

Address:

*[Signature Page to Amended and Restated Operating Agreement]*

**DAY ONE BIOPHARMACEUTIALS HOLDING COMPANY, LLC**

**AMENDMENT NO. 1 TO AMENDED AND RESTATED OPERATING AGREEMENT**

This Amendment No. 1 to Amended and Restated Operating Agreement (this "***Amendment***") is made and entered into as of March 30, 2021, by and among Day One Biopharmaceuticals Holding Company, LLC, a Delaware limited liability company (the "***Company***") and the persons and entities listed on the signature pages hereto. Capitalized used but not defined herein shall have the meanings given to such terms in the Operating Agreement (as defined below).

**RECITALS**

**WHEREAS**, the Company, certain investors (the "***Existing Investors***") and certain stockholders (the "***Existing Stockholders***") previously entered into that certain Amended and Restated Operating Agreement dated as of February 1, 2021 (the "***Operating Agreement***").

**WHEREAS**, pursuant to Section 13.05 of the Operating Agreement, any term of the Operating Agreement may be amended or modified and the observance of any term of the Operating Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), at any time and from time to time, by a written instrument signed by the Company and the Preferred Members holding at least sixty percent (60%) of the then-outstanding Preferred Shares, which shall include the written consent or affirmative vote of at least one Preferred Member who is a holder of solely Series B Convertible Preferred Shares (which, for clarification, shall exclude any Preferred Member holding any Series A Convertible Preferred Shares) (the "***Requisite Holders***").

**WHEREAS**, the undersigned constitute the Requisite Holders.

**NOW**, **THEREFORE**, in consideration of the foregoing recitals and for other consideration, the adequacy and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**1. AMENDMENT OF OPERATING AGREEMENT.**

**1.1. Amendment to Section 4.02(a).** Section 4.02(a) of the Operating Agreement is hereby amended and restated to read in its entirety as follows:

"(a) The authorized number of Managers on the Board to be established at eight (8)."

**1.2. Amendment to Section 4.02(b)(vi).** Section 4.02(b)(vi) of the Operating Agreement is hereby amended and restated to read in its entirety as follows:

"(vi) three (3) individuals, each of whom is not otherwise an Affiliate of the LLC or of any Preferred Member and is acceptable to a majority of the other Managers (the "***Independent Managers***"), which shall initially be John Josey, Natalie Holles and Saira Ramasastry."

**2. GENERAL PROVISIONS.**

**2.1. References to Operating Agreement.** All references to the Operating Agreement in the Operating Agreement or any agreements referenced therein shall hereinafter refer to the Operating Agreement as amended by this Amendment.

**2.2. Full Force and Effect.** Except as expressly modified by this Amendment, the terms of the Operating Agreement shall remain in full force and effect.

**2.3. Counterparts; Facsimile.** This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

**2.4. Effectiveness.** The provisions of this Amendment shall be effective as to all parties to the Operating Agreement upon the execution hereof by the Requisite Holders.

**2.5. Titles and Subtitles.** The titles and subtitles used in this Amendment are used for convenience only and are not to be considered in construing or interpreting this Amendment.

**2.6. Severability.** If one or more provisions of this Amendment are held to be unenforceable under applicable law, such provision shall be excluded from this Amendment, and the balance of the Amendment shall be interpreted as if such provision were so excluded, and shall be enforceable in accordance with its terms.

**2.7. Further Assurances.** The parties agree to execute such further documents and instruments and to take such further actions as may be reasonably necessary to carry out the purposes and intent of this Amendment.

**2.8. Governing Law.** This Amendment and any controversy arising out of or relating to this Amendment shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of law principles that would result in any application of any law other than such laws.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be executed as of the day and year first above written.

**COMPANY:**

**DAY ONE BIOPHARMACEUTICALS HOLDING COMPANY, LLC**

By: _/s/ Jeremy Bender
Name: Jeremy Bender
Title: Chief Executive Officer

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be executed as of the day and year first above written.

**MEMBER:**

**RA CAPITAL HEALTHCARE FUND, L.P.**

By: RA Capital Healthcare Fund GP, LLC
Its General Partner

By: /s/ Peter Kolchinsky
Name: Peter Kolchinsky
Title: Manager

**RA CAPITAL NEXUS FUND II, L.P.**

By: RA Capital Nexus Fund II GP, LLC
Its General Partner

By: /s/ Peter Kolchinsky
Name: Peter Kolchinsky
Title: Manager

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be executed as of the day and year first above written.

**MEMBER:**

**AI DAY1 LLC**

By: Access Industries Management, LLC,
Its: Manager

By: /s/ Suzette Del Giudice
Name: Suzette Del Giudice
Title: Executive Vice President

By: /s/ Alejandro Moreno
Name: Alejandro Moreno
Title: Executive Vice President

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be executed as of the day and year first above written.

**MEMBER:**

**ATLAS VENTURE FUND XI, L.P.**

By: Atlas Venture Associates XI, L.P.,
Its: General Partner

By: Atlas Venture Associates XI, LLC,
Its: General Partner

By: /s/ Ommer Chohan
Name: Ommer Chohan
Title: CFO

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be executed as of the day and year first above written.

**MEMBER:**

**CANAAN XI L.P.**

By: Canaan Partners XI LLC, its General Partner

By: Tim Shannon
Name: Tim Shannon
Title: Manager

**CANAAN 2020+ CO-INVESTMENT L.P.**

By: Canaan Partners 2020+ Co-Investment LLC,
as General Partner

By: Canaan Management LLC, its Manager

By: _____
Name: John J. Pacifico
Title: Chief Operating Officer

**CERTIFICATE OF INCORPORATION**
**OF**
**DAY ONE BIOPHARMACEUTICALS, INC.**

**FIRST**: The name of this corporation is Day One Biopharmaceuticals, Inc. (the "**Corporation**").

**SECOND**: The address of the registered office of the Corporation in the State of Delaware is 251 Little Falls Drive in the City of Wilmington, County of New Castle, 19808, and the name of the registered agent of this Corporation in the State of Delaware at such address is Corporation Service Company.

**THIRD**: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

**FOURTH**: The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) **[_____]** shares of Common Stock, $[_____] par value per share ("**Common Stock**") and (ii) [_____] shares of Preferred Stock, $[_____] par value per share ("**Preferred Stock**"). [_____] shares of the authorized Preferred Stock of the Corporation are hereby designated "**Series A Preferred Stock**", and [_____] shares of the authorized Preferred Stock of the Corporation are hereby designated "**Series B Preferred Stock**".

Pursuant to the terms of that certain Plan of Conversion (the "***Plan of Conversion***") and effective upon the filing of the Certificate of Conversion with the Secretary of State of the State of Delaware in connection with the Plan of Conversion, the Corporation shall issue capital stock as described in the Plan of Conversion.

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein.

2. Voting. The holders of the Common Stock are entitled to one (1) vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings); provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of Incorporation that relates solely to the terms of one (1) or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one (1) or more other such series, to vote thereon pursuant to this Certificate of Incorporation or pursuant to the General Corporation Law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one (1) or more series of Preferred Stock that may be required by the terms of this Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

B. PREFERRED STOCK

The following rights, preferences, powers, privileges and restrictions, qualifications and limitations shall apply to the Preferred Stock. Unless otherwise indicated, references to "sections" or "Sections" in this Part B of this Article Fourth refer to sections and Sections of Part B of this Article Fourth. References to "Preferred Stock" mean the Series A Preferred Stock.

1. Dividends.

The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any consents required elsewhere in this Certificate of Incorporation) the holders of the Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Preferred Stock in an amount at least equal to (i) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Preferred Stock as would equal the product of (A) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (B) the number of shares of Common Stock issuable upon conversion of a share of Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (ii) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Preferred Stock determined by (A) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (B) multiplying such fraction by an amount equal to the Original Issue Price (as defined below); provided that, if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one (1) class or series of capital stock of the Corporation, the dividend payable to the holders of Preferred Stock pursuant to this Section 1 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest Preferred Stock dividend. The "**Original Issue Price**" shall mean, with respect to the Series A Preferred Stock, $[_____] per share, and with respect to the Series B Preferred Stock, $[_____] per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the applicable Preferred Stock.

2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

2.1 Preferential Payments to Holders of Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders or, in the case of a Deemed Liquidation Event (as defined below), out of the consideration payable to stockholders in such Deemed Liquidation Event or the Available Proceeds (as defined below), before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to one times the applicable Original Issue Price, plus any dividends declared but unpaid thereon. If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Preferred Stock the full amount to which they shall be entitled under this Section 2.1, the holders of shares of Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.2 Distribution of Remaining Assets. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment in full of all Liquidation Amounts required to be paid to the holders of shares of Preferred Stock the remaining assets of the Corporation available for distribution to its stockholders or, in the case of a Deemed Liquidation Event, the consideration not payable to the holders of shares of Preferred Stock pursuant to Section 2.1 or the remaining Available Proceeds, as the case may be, shall be distributed among the holders of the shares of Preferred Stock and Common Stock, pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock pursuant to the terms of this Certificate of Incorporation immediately prior to such liquidation, dissolution or winding up of the Corporation. The aggregate amount which a holder of a share of Preferred Stock is entitled to receive under Sections 2.1 and 2.2 is hereinafter referred to as the "**Liquidation Amount**."

2.1 Deemed Liquidation Events.

2.1.1 Definition. Each of the following events shall be considered a "**Deemed Liquidation Event**" unless the holders of at least sixty percent (60%) of the outstanding shares of Preferred Stock, which shall include at least one holder who is a holder of solely Series B Preferred Stock (which, for clarification, shall exclude any holder holding any shares of Series A Preferred Stock) (the "**Requisite Holders**") elect otherwise by written notice sent to the Corporation at least ten days prior to the effective date of any such event:

(a) a merger or consolidation in which

(i) the Corporation is a constituent party or

(ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

(b) (1) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or (2) the sale or disposition (whether by merger, consolidation or otherwise, and whether in a single transaction or a series of related transactions) of one (1) or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

2.1.2 Effecting a Deemed Liquidation Event.

(a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Section 2.3.1(a)(i) unless the agreement or plan of merger or consolidation for such transaction (the "**Merger Agreement**") provides that the consideration payable to the stockholders of the Corporation in such Deemed Liquidation Event shall be allocated to the holders of capital stock of the Corporation in accordance with Sections 2.1 and 2.2.

(b) In the event of a Deemed Liquidation Event referred to in Section 2.3.1(a)(ii) or 2.3.1(b), if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within ninety (90) days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Preferred Stock no later than the ninetieth (90th) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause, (ii) to require the redemption of such shares of Preferred Stock, and (iii) if the Requisite Holders so request in a written instrument delivered to the Corporation not later than one hundred twenty (120) days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation)**,** together with any other assets of the Corporation available for distribution to its stockholders, all to the extent permitted by Delaware law governing distributions to stockholders (the "**Available Proceeds**"), on the one hundred fiftieth (150th) day after such Deemed Liquidation Event, to redeem all outstanding shares of Preferred Stock at a price per share equal to the applicable Liquidation Amount. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Preferred Stock, the Corporation shall redeem a pro rata portion of each holder's shares of Preferred Stock to the fullest extent of such Available Proceeds, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the Available Proceeds were sufficient to redeem all such shares, and shall redeem the remaining shares as soon as it may lawfully do so under Delaware law governing distributions to stockholders. The provisions of Section 6 shall apply, with such necessary changes in the details thereof as are necessitated by the context, to the redemption of the Preferred Stock pursuant to this Section 2.3.2(b). Prior to the distribution or redemption provided for in this Section 2.3.2(b), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business.

2.1.3 Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities to be paid or distributed to such holders pursuant to such Deemed Liquidation Event. The value of such property, rights or securities shall be determined in good faith by the Board of Directors of the Corporation.

2.1.4 Allocation of Escrow and Contingent Consideration. In the event of a Deemed Liquidation Event pursuant to Section 2.3.1(a)(i), if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the "**Additional Consideration**"), the Merger Agreement shall provide that (a) the portion of such consideration that is not Additional Consideration (such portion, the "**Initial Consideration**") shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2.1 and 2.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2.1 and 2.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Section 2.3.4, consideration placed into escrow or retained as a holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

3. Voting.

3.1 General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of this Certificate of Incorporation, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class and on an as-converted to Common Stock basis.

3.2 Election of Directors. The holders of record of the shares of Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect three (3) directors of the Corporation (collectively, the "**Series A Directors**"). The holders of record of the shares of Series B Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation (the "**Series B Director**", and together with the Series A Directors, the "**Preferred Directors**"). The holders of record of the shares of Common Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Preferred Stock), exclusively and voting together as a single class, shall be entitled to elect the balance of the total number of directors of the Corporation (the "***Remaining Directors***"). If any vacancy in the office of any Preferred Director, Common Director or Remaining Director exists, such vacancy may be filled (either contingently or otherwise) by the stockholders as specified in this Section 3.2 or by at least a majority of the members of the Board then in office, although less than a quorum, by a sole remaining member of the Board then in office, even if such directors or such sole remaining director were not elected by the holders of the class, classes or series that are entitled to elect a director or directors to office under the provisions of Section 3.2.1 and such electing director or directors shall specify at the time of such election the specific vacant directorship being filled. Any such vacancy may also be filled by the Corporation's incorporator in connection with the Corporation's conversion from a limited liability company.

3.3 Preferred Stock Protective Provisions. At any time when shares of Preferred Stock are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation, recapitalization, reclassification, or otherwise, do any of the following without (in addition to any other vote required by law or this Certificate of Incorporation) the written consent or affirmative vote of the Requisite Holders given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect.

3.3.1 create, or authorize the creation of, or issue or obligate itself to issue shares of, any class or series of capital shares unless the same ranks junior to the Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of distributions and rights of redemption;

3.3.2 (i) reclassify, alter or amend any existing security of the Corporation that is pari passu with the Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of distributions or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Preferred Stock in respect of any such right, preference, or privilege or (ii) reclassify, alter or amend any existing security of the Corporation that is junior to the Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of distributions or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to or pari passu with the Preferred Stock in respect of any such right, preference or privilege;

3.3.3 set aside or make any distribution in respect of, or redeem (or permit any subsidiary to redeem), or purchase or otherwise acquire any of, (or pay into or set aside for a sinking fund for such purpose) shares of Preferred Stock or Common Stock or other equity securities of the Corporation; *provided*, *however*, that this restriction shall not apply to (i) distributions payable on the Common Stock solely in the form of additional Common Stock, or (ii) the repurchase of Common Stock from managers, directors, officers, employees, advisors, consultants or other persons performing services for the Corporation or any subsidiary of the Corporation upon termination of such person's employment or other relationship with the Corporation at no greater than the original purchase price;

3.3.4 cause any subsidiary to pay or declare any dividend or make any distribution on any shares of capital stock of such subsidiary (unless the same is approved by the Board, which approval must include the affirmative vote, consent or approval of at least two (2) of the Preferred Directors);

3.3.5 effect any merger, consolidation, reclassification, liquidation, dissolution, winding-up, recapitalization, or reorganization or sale or exclusive license of all or substantially all of its assets;

3.3.6 amend, alter, repeal or waive any provision of this Certificate of Corporation or the Corporation's Bylaws;

3.3.7 increase the number of authorized Preferred Stock or Common Stock;

3.3.8 acquire any new preclinical or clinical development program/compound or an equity interest in any entity that is not a wholly owned subsidiary of the Corporation (unless the same is approved by the Board, which approval must include the affirmative vote, consent or approval of at least two (2) of the Preferred Directors);

3.3.9 issue any security of any subsidiary other than to the Corporation (unless the same is approved by the Board, which approval must include the affirmative vote, consent or approval of at least two (2) of the Preferred Directors); or

3.3.10 incur any indebtedness or issue any guaranty of any third-party obligation in an amount greater than $1,000,000 (unless the same is approved by the Board, which approval must include the affirmative vote, consent or approval of at least two (2) of the Preferred Directors), other than ordinary course trade payables, borrowing between the Corporation and its subsidiaries or between the Corporation's subsidiaries.

4. Optional Conversion. The holders of the Preferred Stock shall have conversion rights as follows (the "**Conversion Rights**"):

4.1 Right to Convert.

4.1.1 Conversion Ratio. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the Original Issue Price by the Conversion Price (as defined below) in effect at the time of conversion. The "**Conversion Price**" applicable to each series of Preferred Stock shall initially be equal to the applicable Original Issue Price. Such initial Conversion Price, and the rate at which shares of Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

4.1.2 Termination of Conversion Rights. In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Preferred Stock; provided that the foregoing termination of Conversion Rights shall not affect the amount(s) otherwise paid or payable in accordance with Section 2.1 to holders of Preferred Stock pursuant to such liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event.

4.2 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the number of shares of Common Stock to be issued upon conversion of the Preferred Stock shall be rounded to the nearest whole share.

4.3 Mechanics of Conversion.

4.3.1 Notice of Conversion. In order for a holder of Preferred Stock to voluntarily convert shares of Preferred Stock into shares of Common Stock, such holder shall (a) provide written notice to the Corporation's transfer agent at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent) that such holder elects to convert all or any number of such holder's shares of Preferred Stock and, if applicable, any event on which such conversion is contingent and (b), if such holder's shares are certificated, surrender the certificate or certificates for such shares of Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent). Such notice shall state such holder's name or the names of the nominees in which such holder wishes the shares of Common Stock to be issued. If required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such notice and, if applicable, certificates (or lost certificate affidavit and agreement) shall be the time of conversion (the "**Conversion Time**"), and the shares of Common Stock issuable upon conversion of the specified shares shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time (i) issue and deliver to such holder of Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Preferred Stock represented by the surrendered certificate that were not converted into Common Stock, and (ii) pay all declared but unpaid dividends on the shares of Preferred Stock converted.

4.3.2 Reservation of Shares. The Corporation shall at all times when the Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock at such adjusted Conversion Price.

4.3.3 Effect of Conversion. All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and to receive payment of any dividends declared but unpaid thereon. Any shares of Preferred Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

4.3.4 No Further Adjustment. Upon any such conversion, no adjustment to the Conversion Price shall be made for any declared but unpaid dividends on the Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

4.3.5 Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

4.4 Adjustments to Conversion Price for Diluting Issues.

4.4.1 Special Definitions. For purposes of this Article Fourth, the following definitions shall apply:

(a) "**Additional Shares of Common Stock**" shall mean all shares of Common Stock issued (or, pursuant to Section 4.4.3 below, deemed to be issued) by the Corporation after the Original Issue Date, other than (1) the following shares of Common Stock and (2) shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (clauses (1) and (2), collectively, "**Exempted Securities**"):

(i) as to any series of Preferred Stock shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on such series of Preferred Stock;

(ii) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Section 4.5, 4.6, 4.7 or 4.8;

(iii) shares of Common Stock or Options issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation, including the approval of at least two (2) of the Preferred Directors;

(iv) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security; or

(v) shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors of the Corporation; or

(vi) shares of Common Stock, Options or Convertible Securities issued to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors of the Corporation; or

(vii) shares of Common Stock, Options or Convertible Securities issued as acquisition consideration pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided that such issuances are approved by the Board of Directors of the Corporation, including the approval of at least two (2) Preferred Directors; or

(viii) shares of Common Stock, Options or Convertible Securities issued in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board of Directors of the Corporation.

(b) "**Convertible Securities**" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(c) "**Option**" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(d) "**Original Issue Date**" shall mean the date on which the first Series B Preferred Stock was issued.

4.4.2 No Adjustment of Conversion Price. No adjustment in the Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the Requisite Holders agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

4.4.3 Deemed Issue of Additional Shares of Common Stock.

(a) If the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(b) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Conversion Price pursuant to the terms of Section 4.4.4, are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (b) shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii) the Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(c) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Conversion Price pursuant to the terms of Section 4.4.4 (either because the consideration per share (determined pursuant to Section 4.4.5) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Conversion Price then in effect, or because such Option or Convertible Security was issued before the Original Issue Date), are revised after the Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Section 4.4.3(a) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(d) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Conversion Price pursuant to the terms of Section 4.4.4, the Conversion Price shall be readjusted to such Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(e) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Conversion Price provided for in this Section 4.4.3 shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (b) and (c) of this Section 4.4.3). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Conversion Price that would result under the terms of this Section 4.4.3 at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

4.4.4 Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4.4.3), without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to such issuance or deemed issuance, then the Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

(a) "$CP_2$" shall mean the Conversion Price in effect immediately after such issuance or deemed issuance of Additional Shares of Common Stock

(b) "$CP_1$" shall mean the Conversion Price in effect immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock;

(c) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issuance or deemed issuance or upon conversion or exchange of Convertible Securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

(d) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued or deemed issued at a price per share equal to $CP_1$ (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by $CP_1$); and

(e) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

4.4.5 Determination of Consideration. For purposes of this Section 4.4, the consideration received by the Corporation for the issuance or deemed issuance of any Additional Shares of Common Stock shall be computed as follows:

(a) Cash and Property. Such consideration shall:

(i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and

(iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors of the Corporation.

(b) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4.4.3, relating to Options and Convertible Securities, shall be determined by dividing:

(i) The total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(ii) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

4.4.6 Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Conversion Price pursuant to the terms of Section 4.4.4, and such issuance dates occur within a period of no more than ninety (90) days from the first such issuance to the final such issuance, then, upon the final such issuance, the Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

4.5 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Original Issue Date effect a subdivision of the outstanding Common Stock, the Conversion Price in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock, the Conversion Price in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this Section shall become effective at the close of business on the date the subdivision or combination becomes effective.

4.6 Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

Notwithstanding the foregoing, (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this Section as of the time of actual payment of such dividends or distributions; and (b) that no such adjustment shall be made if the holders of Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

4.7 Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section 1 do not apply to such dividend or distribution, then and in each such event the holders of Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

4.8 Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section 2.3, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Sections 4.4, 4.6 or 4.7), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one (1) share of Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 4 with respect to the rights and interests thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Preferred Stock.

4.9 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than ten (10) days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Preferred Stock (but in any event not later than ten (10) days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Preferred Stock.

4.10 Notice of Record Date. In the event:

(a) the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(b) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Preferred Stock and the Common Stock. Such notice shall be sent at least ten (10) days prior to the record date or effective date for the event specified in such notice.

5. Mandatory Conversion.

5.1 Trigger Events. Upon either (a) the closing of the sale of shares of Common Stock to the public at a price of at least $[31.3597] per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock), in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least $50,000,000 of gross proceeds to the Corporation and in connection with such offering the Common Stock is listed for trading on the Nasdaq Stock Market or the New York Stock Exchange or (b) the date and time, or the occurrence of an event, specified by vote or written consent of the Requisite Holders (the time of such closing or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the "**Mandatory Conversion Time**"), then (i) all outstanding shares of Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective conversion rate as calculated pursuant to Section 4.1.1 and (ii) such shares may not be reissued by the Corporation.

5.2 Procedural Requirements. All holders of record of shares of Preferred Stock shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section 5. Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. Upon receipt of such notice, each holder of shares of Preferred Stock in certificated form shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Preferred Stock converted pursuant to Section 5.1, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender any certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of any certificate or certificates of such holders ssss(or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Section 5.2. As soon as practicable after the Mandatory Conversion Time and, if applicable, the surrender of any certificate or certificates (or lost certificate affidavit and agreement) for Preferred Stock, the Corporation shall (a) issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and (b) pay any declared but unpaid dividends on the shares of Preferred Stock converted. Such converted Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

6. Redeemed or Otherwise Acquired Shares. Any shares of Preferred Stock that are redeemed, converted or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Preferred Stock following redemption, conversion or acquisition.

7. Waiver. Except as otherwise set forth herein, (a) any of the rights, powers, preferences and other terms of the Preferred Stock set forth herein may be waived on behalf of all holders of Preferred Stock by the affirmative written consent or vote of the Requisite Holders and (b) at any time more than one (1) series of Preferred Stock is issued and outstanding, any of the rights, powers, preferences and other terms of any series of Preferred Stock set forth herein may be waived on behalf of all holders of such series of Preferred Stock by the affirmative written consent or vote of the holders of a majority of the shares of such series of Preferred Stock then outstanding.

8. Notices. Any notice required or permitted by the provisions of this Article Fourth to be given to a holder of shares of Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the General Corporation Law, and shall be deemed sent upon such mailing or electronic transmission.

**FIFTH**: Subject to any additional vote required by this Certificate of Incorporation or Bylaws, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

**SIXTH:** Subject to any additional vote required by this Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation. Each director shall be entitled to one (1) vote on each matter presented to the Board of Directors.

**SEVENTH:** Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

**EIGHTH:** Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

**NINTH:** To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article Ninth to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article Ninth by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

**TENTH:** To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which General Corporation Law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

Any amendment, repeal or modification of the foregoing provisions of this Article Tenth shall not (a) adversely affect any right or protection of any director, officer or other agent of the Corporation existing at the time of such amendment, repeal or modification or (b) increase the liability of any director of the Corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

**ELEVENTH:** The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "**Excluded Opportunity**" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock or any partner, member, director, stockholder, employee, affiliate or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, the persons referred to in clauses (i) and (ii) are "**Covered Persons**"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation while such Covered Person is performing services in such capacity. Any repeal or modification of this Article Eleventh will only be prospective and will not affect the rights under this Article Eleventh in effect at the time of the occurrence of any actions or omissions to act giving rise to liability. Notwithstanding anything to the contrary contained elsewhere in this Certificate of Incorporation, the affirmative vote of the holders of a majority of the shares of Preferred Stock the outstanding, will be required to amend or repeal, or to adopt any provisions inconsistent with this Article Eleventh.

**TWELFTH:** Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery in the State of Delaware shall be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation, its directors, officers or employees arising pursuant to any provision of the Delaware General Corporation Law or the Corporation's certificate of incorporation or bylaws or (iv) any action asserting a claim against the Corporation, its directors, officers or employees governed by the internal affairs doctrine, except for, as to each of (i) through (iv) above, any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten (10) days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction. If any provision or provisions of this Article Twelfth shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Twelfth (including, without limitation, each portion of any sentence of this Article Twelfth containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

**THIRTEENTH:** For purposes of Section 500 of the California Corporations Code (to the extent applicable), in connection with any repurchase of shares of Common Stock permitted under this Certificate of Incorporation from employees, officers, directors or consultants of the Corporation in connection with a termination of employment or services pursuant to agreements or arrangements approved by the Board of Directors (in addition to any other consent required under this Certificate of Incorporation), such repurchase may be made without regard to any "preferential dividends arrears amount" or "preferential rights amount" (as those terms are defined in Section 500 of the California Corporations Code). Accordingly, for purposes of making any calculation under California Corporations Code Section 500 in connection with such repurchase, the amount of any "preferential dividends arrears amount" or "preferential rights amount" (as those terms are defined therein) shall be deemed to be zero (0).

**FOURTEENTH**. The name and mailing address of the incorporator is [_____], c/o Fenwick & West LLP, 555 California Street, 12th Floor, San Francisco, CA 94104.

The undersigned incorporator hereby acknowledges that the foregoing certificate is the act and deed of the undersigned and that the facts stated herein are true.

**IN WITNESS WHEREOF**, this Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this __ day of _____, 2021.

By: _____
[_____]

**Exhibit 3.3**

# DAY ONE BIOPHARMACEUTICALS, INC.

a Delaware corporation

## BYLAWS

As Adopted [____], 2021

**DAY ONE BIOPHARMACEUTICALS, INC.**

a Delaware corporation

**BYLAWS**

As Adopted [_], 2021

## ARTICLE I: STOCKHOLDERS

**Section 1.1: Annual Meetings.** Unless members of the Board of Directors of the Corporation (the "***Board***") are elected by written consent in lieu of an annual meeting, as permitted by Section 211 of the Delaware General Corporation Law (the "***DGCL***") and these Bylaws, an annual meeting of stockholders shall be held for the election of directors at such date and time as the Board shall each year fix. The meeting may be held either at a place, within or without the State of Delaware, or by means of remote communication as the Board in its sole discretion may determine. Any proper business may be transacted at the annual meeting.

**Section 1.2: Special Meetings.** Special meetings of stockholders for any purpose or purposes may be called at any time by the Chairperson of the Board, the Chief Executive Officer, the President, the holders of shares of the Corporation that are entitled to cast not less than ten percent (10%) of the total number of votes entitled to be cast by all stockholders at such meeting, or by a majority of the "***Whole Board***," which shall mean the total number of authorized directors, whether or not there exist any vacancies in previously authorized directorships. Special meetings may not be called by any other person or persons. If a special meeting of stockholders is called by any person or persons other than by a majority of the members of the Board, then such person or persons shall request such meeting by delivering a written request to call such meeting to each member of the Board, and the Board shall then determine the time and date of such special meeting, which shall be held not more than one hundred twenty (120) days nor less than thirty-five (35) days after the written request to call such special meeting was delivered to each member of the Board. The special meeting may be held either at a place, within or without the State of Delaware, or by means of remote communication as the Board in its sole discretion may determine.

**Section 1.3: Notice of Meetings.** Notice of all meetings of stockholders shall be given in writing or by electronic transmission in the manner provided by law (including, without limitation, as set forth in Section 7.1.1 of these Bylaws) stating the date, time and place, if any, of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by applicable law or the Certificate of Incorporation of the Corporation (as the same may be amended and/or restated from time to time, the "***Certificate of Incorporation***"), such notice shall be given not less than ten (10), nor more than sixty (60), days before the date of the meeting to each stockholder of record entitled to vote at such meeting.

**Section 1.4: Adjournments.** The chairperson of the meeting shall have the power to adjourn the meeting to another time, date and place (if any). Any meeting of stockholders may adjourn from time to time, and notice need not be given of any such adjourned meeting if the time, date and place (if any) thereof and the means of remote communications (if any) by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; *provided*, *however*, that if the adjournment is for more than thirty (30) days, or if a new record date is fixed for the

adjourned meeting, then a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. At the adjourned meeting the Corporation may transact any business that might have been transacted at the original meeting. To the fullest extent permitted by law, the Board may cancel, postpone or reschedule any previously scheduled special or annual meeting of stockholders before it is to be held, in which case notice shall be provided to the stockholders of the new date, time and place, if any, of the meeting as provided in Section 1.3 above.

**Section 1.5: Quorum.** At each meeting of stockholders the holders of a majority of the voting power of the shares of stock entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business, unless otherwise required by applicable law, the Certificate of Incorporation or these Bylaws. If a quorum shall fail to attend any meeting, the chairperson of the meeting or the holders of a majority of the voting power of the shares entitled to vote who are present, in person or by proxy, at the meeting may adjourn the meeting. Shares of the Corporation's stock belonging to the Corporation (or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation are held, directly or indirectly, by the Corporation), shall neither be entitled to vote nor be counted for quorum purposes; *provided, however*, that the foregoing shall not limit the right of the Corporation or any other corporation to vote any shares of the Corporation's stock held by it in a fiduciary capacity and to count such shares for purposes of determining a quorum.

**Section 1.6: Organization.** Meetings of stockholders shall be presided over by such person as the Board may designate, or, in the absence of such a person, the Chairperson of the Board, or, in the absence of such person, the President of the Corporation, or, in the absence of such person, such person as may be chosen by the holders of a majority of the voting power of the shares entitled to vote who are present, in person or by proxy, at the meeting. Such person shall be chairperson of the meeting and, subject to Section 1.11 hereof, shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seems to him or her to be in order. The Secretary of the Corporation shall act as secretary of the meeting, but in such person's absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

**Section 1.7: Voting; Proxies.** Each stockholder entitled to vote at a meeting of stockholders, or to take corporate action by written consent without a meeting, may authorize another person or persons to act for such stockholder by proxy. Such a proxy may be prepared, transmitted and delivered in any manner permitted by applicable law. Except as may be required in the Certificate of Incorporation, directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Unless otherwise provided by applicable law, the Certificate of Incorporation or these Bylaws, every matter other than the election of directors shall be decided by the affirmative vote of the holders of a majority of the voting power of the shares of stock entitled to vote on such matter that are present in person or represented by proxy at the meeting and are voted for or against the matter.

**Section 1.8: Fixing Date for Determination of Stockholders of Record.**

1.8.1 Meeting of Stockholders. In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the

Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

1.8.2 Payment of Dividends; Other Lawful Action. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall not be more than sixty (60) days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

1.8.3 Action by Written Consent. Unless otherwise restricted by the Certificate of Incorporation, in order that the Corporation may determine the stockholders entitled to express consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date for determining stockholders entitled to express consent to corporate action in writing without a meeting is fixed by the Board, (i) when no prior action of the Board is required by law, the record date for such purpose shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, and (ii) if prior action by the Board is required by law, the record date for such purpose shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

**Section 1.9: List of Stockholders Entitled to Vote.** The Corporation shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of stockholders entitled to vote at the meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least ten (10) days prior to the meeting, either on a reasonably accessible electronic network as permitted by law (provided that the information

required to gain access to the list is provided with the notice of the meeting) or during ordinary business hours at the principal place of business of the Corporation. If the meeting is held at a location where stockholders may attend in person, the list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present at the meeting. If the meeting is held solely by means of remote communication, then the list shall be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access the list shall be provided with the notice of the meeting.

**Section 1.10: Action by Written Consent of Stockholders.**

1.10.1 Procedure. Unless otherwise provided by the Certificate of Incorporation, any action required or permitted to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed in the manner permitted by law by the holders of outstanding stock having not less than the number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, to its principal place of business or to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the agent of the Corporation's registered office in the State of Delaware shall be by hand or by certified or registered mail, return receipt requested. Written stockholder consents shall bear the date of signature of each stockholder who signs the consent in the manner permitted by law and shall be delivered to the Corporation as provided in Section 1.10.2 below. No written consent shall be effective to take the action set forth therein unless, within sixty (60) days of the earliest dated consent delivered to the Corporation in the manner required by law, written consents signed by a sufficient number of stockholders to take the action set forth therein are delivered to the Corporation in the manner required by law.

1.10.2 Form of Consent A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxy holder, or a person or persons authorized to act for a stockholder or proxy holder, shall be deemed to be written, signed and dated for the purposes of this section, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the Corporation can determine (a) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder or proxy holder or by a person or persons authorized to act for the stockholder or proxy holder and (b) the date on which such stockholder or proxy holder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission may be otherwise delivered to the principal place of business of the Corporation or to an officer or agent of the Corporation

having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the Board. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

1.10.3 Notice of Consent. Prompt notice of the taking of corporate action by stockholders without a meeting by less than unanimous written consent of the stockholders shall be given to those stockholders who have not consented thereto in writing and, who, if the action had been taken at a meeting, would have been entitled to notice of the meeting, if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation as required by law. If the action which is consented to is such as would have required the filing of a certificate under the DGCL if such action had been voted on by stockholders at a meeting thereof, then if the DGCL so requires, the certificate so filed shall state, in lieu of any statement required by the DGCL concerning any vote of stockholders, that written stockholder consent has been given in accordance with Section 228 of the DGCL.

**Section 1.11: Inspectors of Elections.**

1.11.1 Applicability. Unless otherwise required by the Certificate of Incorporation or by the DGCL, the following provisions of this Section 1.11 shall apply only if and when the Corporation has a class of voting stock that is: (a) listed on a national securities exchange; (b) authorized for quotation on an interdealer quotation system of a registered national securities association; or (c) held of record by more than two thousand (2,000) stockholders. In all other cases, observance of the provisions of this Section 1.11 shall be optional, and at the discretion of the Board.

1.11.2 Appointment. The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors of election to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting.

1.11.3 Inspector’s Oath. Each inspector of election, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector’s ability.

1.11.4 Duties of Inspectors. At a meeting of stockholders, the inspectors of election shall (a) ascertain the number of shares outstanding and the voting power of each share, (b) determine the shares represented at a meeting and the validity of proxies and ballots, (c) count all votes and ballots, (d) determine and retain for a reasonable period of time a record of the disposition of any challenges made to any determination by the inspectors, and (e) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

1.11.5 Opening and Closing of Polls. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced by the chairperson of the meeting at the meeting. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery upon application by a stockholder shall determine otherwise.

1.11.6 Determinations. In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in connection with proxies in accordance with any information provided pursuant to Section 211(a)(2)(B)(i) of the DGCL, or Sections 211(e) or 212(c)(2) of the DGCL, ballots and the regular books and records of the Corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification of their determinations pursuant to this Section 1.11 shall specify the precise information considered by them, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable.

## ARTICLE II: BOARD OF DIRECTORS

**Section 2.1: Number; Qualifications.** The Board shall consist of one or more members. The initial number of directors shall be Eight (8), and, thereafter, unless otherwise required by law or the Certificate of Incorporation, shall be fixed from time to time by resolution of a majority of the Whole Board or the stockholders of the Corporation holding at least a majority of the voting power of the Corporation's outstanding stock then entitled to vote at an election of directors. No decrease in the authorized number of directors constituting the Board shall shorten the term of any incumbent director. Directors need not be stockholders of the Corporation.

**Section 2.2: Election; Resignation; Removal; Vacancies.** The Board shall initially consist of the person or persons elected by the incorporator or named in the Corporation's initial Certificate of Incorporation. Unless otherwise provided by the Certificate of Incorporation, each director shall hold office until the next annual meeting of stockholders and until such director's successor is duly elected and qualified, or until such director's earlier death, resignation or removal. Any director may resign at any time upon written notice or notice by electronic transmission to the Corporation. Except as otherwise provided by the Certificate of Incorporation or applicable law, (a) any director or the entire Board may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors and (b) any vacancy occurring in the Board for any reason, and any newly created directorship resulting from any increase in the authorized number of directors to be elected by all stockholders having the right to vote as a single class, may be filled by the stockholders or by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

**Section 2.3: Regular Meetings.** Regular meetings of the Board may be held at such places, within or without the State of Delaware, and at such times as the Board may from time to time determine. Notice of regular meetings need not be given if the date, times and places thereof are fixed by resolution of the Board.

**Section 2.4: Special Meetings.** Special meetings of the Board may be called by the Chairperson of the Board, the President or a majority of the members of the Board then in office and may be held at any time, date or place, within or without the State of Delaware, as the person or persons calling the meeting shall fix. Notice of the time, date and place of such meeting shall be given, orally, in writing or by electronic transmission (including electronic mail), by the person or persons calling the meeting to all directors at least four (4) days before the meeting if the notice is mailed, or at least twenty-four (24) hours before the meeting if such notice is given by telephone, hand delivery, telegram, telex, mailgram, facsimile, electronic mail or other means of electronic transmission. Unless otherwise indicated in the notice, any and all business may be transacted at a special meeting.

**Section 2.5: Remote Meetings Permitted.** Members of the Board, or any committee of the Board, may participate in a meeting of the Board or such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to conference telephone or other communications equipment shall constitute presence in person at such meeting.

**Section 2.6: Quorum; Vote Required for Action.** Subject to Section 2.2 above regarding the ability of the members of the Board to fill a vacancy or newly-created directorship on the Board, at all meetings of the Board, the presence a majority of the then current members of the Board shall constitute a quorum for the transaction of business; provided, however, that such majority shall constitute at least one-third (1/3) of the Whole Board. If a quorum shall fail to attend any meeting, a majority of those present may adjourn the meeting to another place, date or time without further notice thereof. Except as otherwise provided herein or in the Certificate of Incorporation, or required by law, the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board.

**Section 2.7: Organization.** Meetings of the Board shall be presided over by the Chairperson of the Board, or in such person's absence by the President, or in such person's absence by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in such person's absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

**Section 2.8: Written Action by Directors.** Any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee, respectively, in the minute books of the Corporation. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

**Section 2.9: Powers.** The Board may, except as otherwise required by law or the Certificate of Incorporation, exercise all such powers and manage and direct all such acts and things as may be exercised or done by the Corporation.

**Section 2.10: Compensation of Directors.** Members of the Board, as such, may receive, pursuant to a resolution of the Board, fees and other compensation for their services as directors, including without limitation their services as members of committees of the Board.

## ARTICLE III: COMMITTEES

**Section 3.1: Committees.** The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting of such committee who are not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent provided in a resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority in reference to the following matters: (a) approving, adopting, or recommending to the stockholders any action or matter (other than the election or removal of members of the Board) expressly required by the DGCL to be submitted to stockholders for approval or (b) adopting, amending or repealing any bylaw of the Corporation.

**Section 3.2: Committee Rules.** Unless the Board otherwise provides, each committee designated by the Board may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board conducts its business pursuant to Article II of these Bylaws.

## ARTICLE IV: OFFICERS

**Section 4.1: Generally.** The officers of the Corporation shall consist of a Chief Executive Officer (who may be the Chairperson of the Board or the President), a Secretary and a Treasurer and may consist of such other officers, including a Chief Financial Officer, Chief Technology Officer and one or more Vice Presidents, as may from time to time be appointed by the Board. All officers shall be elected by the Board; *provided*, *however*, that the Board may empower the Chief Executive Officer of the Corporation to appoint any officer other than the Chairperson of the Board, the Chief Executive Officer, the President, the Chief Financial Officer or the Treasurer. Each officer shall hold office until such person's successor is appointed or until such person's earlier resignation, death or removal. Any number of offices may be held by the same person. Any officer may resign at any time upon written notice to the Corporation. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled by the Board.

**Section 4.2: Chief Executive Officer.** Subject to the control of the Board and such supervisory powers, if any, as may be given by the Board, the powers and duties of the Chief Executive Officer of the Corporation are:

(a) To act as the general manager and, subject to the control of the Board, to have general supervision, direction and control of the business and affairs of the Corporation;

(b) Subject to Article I, Section 1.6, to preside at all meetings of the stockholders;

(c) Subject to Article I, Section 1.2, to call special meetings of the stockholders to be held at such times and, subject to the limitations prescribed by law or by these Bylaws, at such places as he or she shall deem proper; and

(d) To affix the signature of the Corporation to all deeds, conveyances, mortgages, guarantees, leases, obligations, bonds, certificates and other papers and instruments in writing which have been authorized by the Board or which, in the judgment of the Chief Executive Officer, should be executed on behalf of the Corporation; to sign certificates for shares of stock of the Corporation; and, subject to the direction of the Board, to have general charge of the property of the Corporation and to supervise and control all officers, agents and employees of the Corporation.

The President shall be the Chief Executive Officer of the Corporation unless the Board shall designate another officer to be the Chief Executive Officer. If there is no President, and the Board has not designated any other officer to be the Chief Executive Officer, then the Chairperson of the Board shall be the Chief Executive Officer.

**Section 4.3: Chairperson of the Board.** The Chairperson of the Board shall be chosen from among the members of the Board and shall have the power to preside at all meetings of the Board and shall have such other powers and duties as provided in these Bylaws and as the Board may from time to time prescribe.

**Section 4.4: President.** The Chief Executive Officer shall be the President of the Corporation unless the Board shall have designated one individual as the President and a different individual as the Chief Executive Officer of the Corporation. Subject to the provisions of these Bylaws and to the direction of the Board, and subject to the supervisory powers of the Chief Executive Officer (if the Chief Executive Officer is an officer other than the President), and subject to such supervisory powers and authority as may be given by the Board to the Chairperson of the Board, and/or to any other officer, the President shall have the responsibility for the general management and control of the business and affairs of the Corporation and the general supervision and direction of all of the officers, employees and agents of the Corporation (other than the Chief Executive Officer, if the Chief Executive Officer is an officer other than the President) and shall perform all duties and have all powers that are commonly incident to the office of President or that are delegated to the President by the Board.

**Section 4.5: Vice President.** Each Vice President shall have all such powers and duties as are commonly incident to the office of Vice President, or that are delegated to him or her by the Board or the Chief Executive Officer. A Vice President may be designated by the Board to perform the duties and exercise the powers of the Chief Executive Officer in the event of the Chief Executive Officer's absence or disability.

**Section 4.6: Chief Financial Officer.** The Chief Financial Officer shall be the Treasurer of the Corporation unless the Board shall have designated another officer as the Treasurer of the Corporation. Subject to the direction of the Board and the Chief Executive Officer, the Chief Financial Officer shall perform all duties and have all powers that are commonly incident to the office of Chief Financial Officer.

**Section 4.7: Treasurer.** The Treasurer shall have custody of all moneys and securities of the Corporation. The Treasurer shall make such disbursements of the funds of the Corporation as are authorized and shall render from time to time an account of all such transactions. The Treasurer shall also perform such other duties and have such other powers as are commonly incident to the office of Treasurer, or as the Board or the Chief Executive Officer may from time to time prescribe.

**Section 4.8: Chief Technology Officer.** The Chief Technology Officer shall have responsibility for the general research and development activities of the Corporation, for supervision of the Corporation's research and development personnel, for new product development and product improvements, for overseeing the development and direction of the Corporation's intellectual property development and such other responsibilities as may be given to the Chief Technology Officer by the Board, subject to: (a) the provisions of these Bylaws; (b) the direction of the Board; (c) the supervisory powers of the Chief Executive Officer of the Corporation; and (d) those supervisory powers that may be given by the Board to the Chairperson or Vice Chairperson of the Board.

**Section 4.9: Secretary.** The Secretary shall issue or cause to be issued all authorized notices for, and shall keep, or cause to be kept, minutes of all meetings of the stockholders and the Board. The Secretary shall have charge of the corporate minute books and similar records and shall perform such other duties and have such other powers as are commonly incident to the office of Secretary, or as the Board or the Chief Executive Officer may from time to time prescribe.

**Section 4.10: Delegation of Authority.** The Board may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any provision hereof.

**Section 4.11: Removal.** Any officer of the Corporation shall serve at the pleasure of the Board and may be removed at any time, with or without cause, by the Board; provided that if the Board has empowered the Chief Executive Officer to appoint any Vice Presidents of the Corporation, then such Vice Presidents may be removed by the Chief Executive Officer. Such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation.

## ARTICLE V: STOCK

**Section 5.1: Certificates.** The shares of capital stock of the Corporation shall be represented by certificates; *provided*, *however*, that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock may be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation (or the transfer agent or registrar, as the case may be). Notwithstanding the adoption of such resolution by the Board, every holder of stock that is represented by a certificate

shall be entitled to have a certificate signed by or in the name of the Corporation by any two authorized officers representing the number of shares owned by such stockholder in the Corporation registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were an officer, transfer agent or registrar at the date of issue.

**Section 5.2: Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates or Uncertificated Shares.** The Corporation may issue a new certificate of stock, or uncertificated shares, in the place of any certificate previously issued by it, alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to agree to indemnify the Corporation and/or to give the Corporation a bond sufficient to indemnify it, against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

**Section 5.3: Other Regulations.** The issue, transfer, conversion and registration of stock certificates and uncertificated securities shall be governed by such other regulations as the Board may establish.

## ARTICLE VI: INDEMNIFICATION

**Section 6.1: Indemnification of Officers and Directors.** Each person who was or is made a party to, or is threatened to be made a party to, or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "***Proceeding***"), by reason of the fact that such person (or a person of whom such person is the legal representative), is or was a member of the Board or officer of the Corporation or a Reincorporated Predecessor (as defined below) or is or was serving at the request of the Corporation or a Reincorporated Predecessor as a member of the board of directors, officer or trustee of another corporation, or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans (for purposes of this Article VI, an "***Indemnitee***"), shall be indemnified and held harmless by the Corporation to the fullest extent permitted by applicable law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expenses, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such Indemnitee in connection therewith, provided such Indemnitee acted in good faith and in a manner that the Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or Proceeding, had no reasonable cause to believe the Indemnitee's conduct was unlawful. Such indemnification shall continue as to an Indemnitee who has ceased to be a director or officer and shall inure to the benefit of such Indemnitees' heirs, executors and administrators. Notwithstanding the foregoing, the Corporation shall indemnify any such Indemnitee seeking indemnity in connection with a Proceeding (or part thereof) initiated by such Indemnitee only if such Proceeding (or part thereof) was authorized by the Board or such indemnification is authorized by an agreement approved by the Board. As used herein, the term the "***Reincorporated***

***Predecessor***" means a corporation that is merged with and into the Corporation in a statutory merger where (a) the Corporation is the surviving corporation of such merger and (b) the primary purpose of such merger is to change the corporate domicile of the Reincorporated Predecessor to Delaware.

**Section 6.2: Advance of Expenses.** The Corporation shall pay all expenses (including attorneys' fees) incurred by such an Indemnitee in defending any such Proceeding as they are incurred in advance of its final disposition; *provided*, *however*, that (a) if the DGCL then so requires, the payment of such expenses incurred by such an Indemnitee in advance of the final disposition of such Proceeding shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such Indemnitee, to repay all amounts so advanced if it should be determined ultimately by final judicial decision from which there is no appeal that such Indemnitee is not entitled to be indemnified under this Article VI or otherwise; and (b) the Corporation shall not be required to advance any expenses to a person against whom the Corporation directly brings a claim, in a Proceeding, alleging that such person has breached such person's duty of loyalty to the Corporation, committed an act or omission not in good faith or that involves intentional misconduct or a knowing violation of law, or derived an improper personal benefit from a transaction.

**Section 6.3: Non-Exclusivity of Rights.** The rights conferred on any person in this Article VI shall not be exclusive of any other right that such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaw, agreement, vote or consent of stockholders or disinterested directors, or otherwise. Additionally, nothing in this Article VI shall limit the ability of the Corporation, in its discretion, to indemnify or advance expenses to persons whom the Corporation is not obligated to indemnify or advance expenses pursuant to this Article VI.

**Section 6.4: Indemnification Contracts.** The Board is authorized to cause the Corporation to enter into indemnification contracts with any director, officer, employee or agent of the Corporation, or any person serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including employee benefit plans, providing indemnification or advancement rights to such person. Such rights may be greater than those provided in this Article VI.

**Section 6.5: Right of Indemnitee to Bring Suit.** The following shall apply to the extent not in conflict with any indemnification contract provided for in Section 6.4 above.

6.5.1 Right to Bring Suit. If a claim under Section 6.1 or 6.2 of this Article VI is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the Indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (a) any suit brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the Indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (b) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the Indemnitee has not met any applicable standard for indemnification set forth in applicable law.

6.5.2 Effect of Determination. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in applicable law, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) that the Indemnitee has not met such applicable standard of conduct, shall create a presumption that the Indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the Indemnitee, be a defense to such suit.

6.5.3 Burden of Proof. In any suit brought by the Indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VI, or otherwise, shall be on the Corporation.

**Section 6.6: Nature of Rights.** The rights conferred upon Indemnitees in this Article VI shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be a director, officer or trustee and shall inure to the benefit of the Indemnitee's heirs, executors and administrators. Any amendment, repeal or modification of any provision of this Article VI that adversely affects any right of an Indemnitee or an Indemnitee's successors shall be prospective only, and shall not adversely affect any right or protection conferred on a person pursuant to this Article VI and existing at the time of such amendment, repeal or modification.

## ARTICLE VII: NOTICES

**Section 7.1: Notice.**

7.1.1 Form and Delivery. Except as otherwise specifically required in these Bylaws (including, without limitation, Section 7.1.2 below) or by law, all notices required to be given pursuant to these Bylaws shall be in writing and may, (a) in every instance in connection with any delivery to a member of the Board, be effectively given by hand delivery (including use of a delivery service), by depositing such notice in the mail, postage prepaid, or by sending such notice by prepaid telegram, cablegram, overnight express courier, facsimile, electronic mail or other form of electronic transmission and (b) be effectively be delivered to a stockholder when given by hand delivery, by depositing such notice in the mail, postage prepaid or, if specifically consented to by the stockholder as described in Section 7.1.2 of this Article VII by sending such notice by telegram, cablegram, facsimile, electronic mail or other form of electronic transmission. Any such notice shall be addressed to the person to whom notice is to be given at such person's address as it appears on the records of the Corporation. The notice shall be deemed given (a) in the case of hand delivery, when received by the person to whom notice is to be given or by any person accepting such notice on behalf of such person, (b) in the case of delivery by mail, upon deposit in the mail, (c) in the case of delivery by overnight express courier, when dispatched, and (d) in the case of delivery via telegram, cablegram, facsimile, electronic mail or other form of electronic transmission, when dispatched.

7.1.2 Electronic Transmission. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation, or these Bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given in accordance with Section 232 of the DGCL. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any such consent shall be deemed revoked if (a) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (b) such inability becomes known to the Secretary or an Assistant Secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice; *provided*, *however*, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given pursuant to this Section 7.1.2 shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of such posting and the giving of such separate notice; and (iv) if by any other form of electronic transmission, when directed to the stockholder.

7.1.3 Affidavit of Giving Notice. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Corporation that the notice has been given in writing or by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

**Section 7.2: Waiver of Notice.** Whenever notice is required to be given under any provision of the DGCL, the Certificate of Incorporation or these Bylaws, a written waiver of notice, signed by the person entitled to notice, or waiver by electronic transmission by such person, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any waiver of notice.

## ARTICLE VIII: INTERESTED DIRECTORS

**Section 8.1: Interested Directors.** No contract or transaction between the Corporation and one or more of its members of the Board or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are members of the board of directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee thereof that authorizes the contract or transaction, or solely because his, her or their votes are counted for such purpose, if: (a) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes

the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; (b) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (c) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board, a committee thereof, or the stockholders.

**Section 8.2: Quorum.** Interested directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which authorizes the contract or transaction.

## ARTICLE IX: MISCELLANEOUS

**Section 9.1: Annual Report.** During such time or times that the Corporation is subject to Section 1501 of the California General Corporation Law, if and so long as there are fewer than one hundred (100) holders of record of the Corporation's shares, the requirement of sending of an annual report to the stockholders of the Corporation is hereby expressly waived.

**Section 9.2: Fiscal Year.** The fiscal year of the Corporation shall be determined by resolution of the Board.

**Section 9.3: Seal.** The Board may provide for a corporate seal, which may have the name of the Corporation inscribed thereon and shall otherwise be in such form as may be approved from time to time by the Board.

**Section 9.4: Form of Records.** Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on or by means of, or be in the form of, diskettes, CDs, or any other information storage device or method, provided that the records so kept can be converted into clearly legible paper form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to any provision of the DGCL.

**Section 9.5: Reliance upon Books and Records.** A member of the Board, or a member of any committee designated by the Board shall, in the performance of such person's duties, be fully protected in relying in good faith upon records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees of the Board, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

**Section 9.6: Certificate of Incorporation Governs.** In the event of any conflict between the provisions of the Certificate of Incorporation and Bylaws, the provisions of the Certificate of Incorporation shall govern.

**Section 9.7: Severability.** If any provision of these Bylaws shall be held to be invalid, illegal, unenforceable or in conflict with the provisions of the Certificate of Incorporation, then such provision shall nonetheless be enforced to the maximum extent possible consistent with such holding and the remaining provisions of these Bylaws (including without limitation, all portions of any section of these Bylaws containing any such provision held to be invalid, illegal, unenforceable or in conflict with the Certificate of Incorporation, that are not themselves invalid, illegal, unenforceable or in conflict with the Certificate of Incorporation) shall remain in full force and effect.

## ARTICLE X: FORUM SELECTION

Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the United States Securities Act of 1933, as amended, and the rules and regulations promulgated by the Securities and Exchange Commission thereunder. Any person or entity purchasing or otherwise acquiring or holding any interest in any security of the Corporation shall be deemed to have notice of and consented to the provisions of this Article X.

## ARTICLE XI: AMENDMENT

Unless otherwise required by the Certificate of Incorporation, stockholders of the Corporation holding at least a majority of the voting power of the Corporation's outstanding voting stock then entitled to vote at an election of directors shall have the power to adopt, amend or repeal Bylaws. To the extent provided in the Certificate of Incorporation, the Board shall also have the power to adopt, amend or repeal Bylaws of the Corporation.

**CERTIFICATION OF BYLAWS**
**OF**
**DAY ONE BIOPHARMACEUTICALS, INC.**

a Delaware corporation

I, Charles York II, certify that I am Secretary of Day One Biopharmaceuticals, Inc., a Delaware corporation (the "***Corporation***"), that I am duly authorized to make and deliver this certification, that the attached Bylaws are a true and complete copy of the Bylaws of the Corporation in effect as of the date of this certificate.

Dated: [____], 2021

Charles York II, Chief Operating Officer, Chief Financial Officer and Secretary

**DAY ONE BIOPHARMACEUTICALS, INC.**

**RESTATED CERTIFICATE OF INCORPORATION**

Day One Biopharmaceuticals, Inc., a Delaware corporation, hereby certifies as follows:

1. The name of this corporation is "Day One Biopharmaceuticals, Inc." The date of the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was [__], 2021 under the name Day One Biopharmaceuticals, Inc.

2. The Restated Certificate of Incorporation of this corporation attached hereto as Exhibit A, which is incorporated herein by this reference, and which restates, integrates and further amends the provisions of the Certificate of Incorporation of this corporation as previously amended and/or restated, has been duly adopted by this corporation's Board of Directors and by the stockholders in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, with the approval of this corporation's stockholders having been given by written consent without a meeting in accordance with Section 228 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, this corporation has caused this Restated Certificate of Incorporation to be signed by its duly authorized officer and the foregoing facts stated herein are true and correct.

Dated: [__], 2021

DAY ONE BIOPHARMACEUTICALS, INC.

By: _____
Name: Jeremy Bender
Title: Chief Executive Officer

**EXHIBIT A**

**DAY ONE BIOPHARMACEUTICALS, INC.**

**RESTATED CERTIFICATE OF INCORPORATION**

**ARTICLE I: NAME**

The name of the corporation is Day One Biopharmaceuticals, Inc. (the "***Corporation***").

**ARTICLE II: AGENT FOR SERVICE OF PROCESS**

The address of the registered office of this Corporation in the State of Delaware is 251 Little Falls Drive in the City of Wilmington, County of New Castle, 19808, and the name of the registered agent of this Corporation in the State of Delaware at such address is Corporation Service Company.

**ARTICLE III: PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "***General Corporation Law***").

**ARTICLE IV: AUTHORIZED STOCK**

**1. Total Authorized**. The total number of shares of all classes of stock that the Corporation has authority to issue is 510,000,000 shares, consisting of two classes: 500,000,000 shares of Common Stock, $0.0001 par value per share ("***Common Stock***"), and 10,000,000 shares of Preferred Stock, $0.0001 par value per share ("***Preferred Stock***").

**2. Designation of Additional Series.**

2.1. The Board of Directors of the Corporation (the "***Board***") is authorized, subject to any limitations prescribed by the law of the State of Delaware, to provide for the issuance of the shares of Preferred Stock in one or more series, and, by filing a Certificate of Designation pursuant to the applicable law of the State of Delaware ("***Certificate of Designation***"), to establish from time to time the number of shares to be included in each such series, to fix the designation, vesting, powers (including voting powers), preferences and relative, participating, optional or other special rights, if any, of the shares of each such series and any qualifications, limitations or restrictions thereof, and, except where otherwise provided in the applicable Certificate of Designation, to thereafter increase (but not above the total number of authorized shares of the Preferred Stock) or decrease (but not below the number of shares of such series then outstanding) the number of shares of any such series. The number of authorized shares of Preferred Stock may also be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of two-thirds of the voting power of all then-outstanding shares

of capital stock of the Corporation entitled to vote thereon, voting together as a single class, without a separate vote of the holders of the Preferred Stock, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law, unless a separate vote of the holders of one or more series is required pursuant to the terms of any Certificate of Designation; *provided*, *however*, that if two-thirds of the Whole Board (as defined below) has approved such increase or decrease of the number of authorized shares of Preferred Stock, then only the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of the capital stock of the Corporation entitled to vote thereon, voting together as a single class, without a separate vote of the holders of the Preferred Stock, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law, unless a separate vote of the holders of one or more series is required pursuant to the terms of any Certificate of Designation, shall be required to effect such increase or decrease. For purposes of this Restated Certificate of Incorporation (as the same may be amended and/or restated from time to time, including pursuant to the terms of any Certificate of Designation designating a series of Preferred Stock, this "***Certificate of Incorporation***"), the term "***Whole Board***" shall mean the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships.

2.2 Except as otherwise expressly provided in any Certificate of Designation designating any series of Preferred Stock pursuant to the foregoing provisions of this Article IV, any new series of Preferred Stock may be designated, fixed and determined as provided herein by the Board without approval of the holders of Common Stock or the holders of Preferred Stock, or any series thereof, and any such new series may have powers, preferences and rights, including, without limitation, voting powers, dividend rights, liquidation rights, redemption rights and conversion rights, senior to, junior to or pari passu with the rights of the Common Stock, any series of Preferred Stock or any future class or series of capital stock of the Corporation.

2.3 Each outstanding share of Common Stock shall entitle the holder thereof to one vote on each matter properly submitted to the stockholders of the Corporation for their vote; *provided*, *that*, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any Certificate of Designation relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any Certificate of Designation relating to any series of Preferred Stock).

## ARTICLE V: AMENDMENT OF BYLAWS

The Board shall have the power to adopt, amend or repeal the Bylaws of the Corporation (as the same may be amended and/or restated from time to time, the "***Bylaws***"). Any adoption, amendment or repeal of the Bylaws by the Board shall require the approval of a majority of the Whole Board. The stockholders shall also have power to adopt, amend or repeal the Bylaws; *provided*, *that*, notwithstanding any other provision of this Certificate of Incorporation or any provision of law that might otherwise permit a lesser or no vote, but in addition to any vote of the holders of any class or series of stock of the Corporation required by applicable law or by this Certificate of Incorporation (including any Preferred Stock issued pursuant to a Certificate of Designation), the affirmative vote of the holders of at least two-thirds of the voting power of all then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the

election of directors, voting together as a single class, shall be required for the stockholders to adopt, amend or repeal any provision of the Bylaws; *provided, further*, that, in the case of any proposed adoption, amendment or repeal of any provisions of the Bylaws that is approved by the Board and submitted to the stockholders for adoption thereby, if two-thirds of the Whole Board has approved such adoption, amendment or repeal of any provisions of the Bylaws, then only the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class (in addition to any vote of the holders of any class or series of stock of the Corporation required by applicable law or by this Certificate of Incorporation (including any Preferred Stock issued pursuant to a Certificate of Designation)), shall be required to adopt, amend or repeal any provision of the Bylaws.

## ARTICLE VI: MATTERS RELATING TO THE BOARD OF DIRECTORS

**1. Director Powers**. Except as otherwise provided by the General Corporation Law, the Bylaws of the Corporation or this Certificate of Incorporation, the business and affairs of the Corporation shall be managed by or under the direction of the Board.

**2. Number of Directors**. Subject to the special rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the total number of directors constituting the Whole Board shall be fixed from time to time exclusively by resolution adopted by a majority of the Whole Board.

**3. Classified Board**. Subject to the special rights of the holders of one or more series of Preferred Stock to elect additional directors under specified circumstances, the directors shall be divided, with respect to the time for which they severally hold office, into three classes designated as Class I, Class II and Class III, respectively (the "***Classified Board***"). The Board may assign members of the Board already in office to the Classified Board, which assignments shall become effective at the same time that the Classified Board becomes effective. Directors shall be assigned to each class in accordance with a resolution or resolutions adopted by the Board. The number of directors in each class shall be divided as nearly equal as is practicable. The initial term of office of the Class I directors shall expire at the Corporation's first annual meeting of stockholders following the closing of the Corporation's initial public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, relating to the offer and sale of Common Stock to the public (the "***Initial Public Offering***"), the initial term of office of the Class II directors shall expire at the Corporation's second annual meeting of stockholders following the closing of the Initial Public Offering and the initial term of office of the Class III directors shall expire at the Corporation's third annual meeting of stockholders following the closing of the Initial Public Offering. At each annual meeting of stockholders following the closing of the Initial Public Offering, directors elected to succeed those directors of the class whose terms then expire shall be elected for a term of office expiring at the third succeeding annual meeting of stockholders after their election.

**4. Term and Removal**. Each director shall hold office until the annual meeting at which such director's term expires and until such director's successor is duly elected and qualified, or until such director's earlier death, resignation, disqualification or removal. Any director may resign at any time by delivering a resignation in writing or by electronic transmission to the Corporation at its principal office or to the Chairperson of the Board, the Chief Executive Officer

or the Secretary. Subject to the special rights of the holders of any series of Preferred Stock, no director may be removed from the Board except for cause and only by the affirmative vote of the holders of at least two-thirds of the voting power of the then-outstanding shares of capital stock of the Corporation entitled to vote thereon, voting together as a single class. In the event of any increase or decrease in the authorized number of directors, (a) each director then serving as such shall nevertheless continue as a director of the class of which he or she is a member and (b) the newly created or eliminated directorships resulting from such increase or decrease shall be apportioned by the Board among the classes of directors so as to make all classes as nearly equal in number as is practicable, provided that no decrease in the number of directors constituting the Board shall shorten the term of any director.

**5. Board Vacancies and Newly Created Directorships**. Subject to the special rights of the holders of any series of Preferred Stock, any vacancy occurring in the Board for any cause, and any newly created directorship resulting from any increase in the authorized number of directors, shall, unless (a) the Board determines by resolution that any such vacancies or newly created directorships shall be filled by the stockholders or (b) as otherwise provided by law, be filled only by the affirmative vote of a majority of the directors then in office, even if less than a quorum, or by a sole remaining director, and shall not be filled by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for a term expiring at the annual meeting of stockholders at which the term of office of the class to which the director has been assigned expires and until such director's successor shall have been duly elected and qualified, or until such director's earlier death, resignation, disqualification or removal.

**6. Vote by Ballot**. Election of directors need not be by written ballot unless the Bylaws shall so provide.

## ARTICLE VII: DIRECTOR LIABILITY

**1. Limitation of Liability**. To the fullest extent permitted by law, no director of the Corporation shall be personally liable for monetary damages for breach of fiduciary duty as a director. Without limiting the effect of the preceding sentence, if the General Corporation Law is hereafter amended to authorize the further elimination or limitation of the liability of a director, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law, as so amended.

**2. Change in Rights**. Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article VII, shall eliminate, reduce or otherwise adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such amendment, repeal or adoption of such an inconsistent provision.

## ARTICLE VIII: MATTERS RELATING TO STOCKHOLDERS

**1. No Action by Written Consent of Stockholders**. Subject to the rights of any series of Preferred Stock then outstanding, no action shall be taken by the stockholders of the Corporation except at a duly called annual or special meeting of stockholders and no action shall be taken by the stockholders of the Corporation by written consent in lieu of a meeting.

**2. Special Meeting of Stockholders.** Special meetings of the stockholders of the Corporation may be called only by the Chairperson of the Board, the Chief Executive Officer, the Lead Independent Director (as defined in the Bylaws), the President or the Board acting pursuant to a resolution adopted by a majority of the Whole Board and may not be called by the stockholders or any other person or persons.

**3. Advance Notice of Stockholder Nominations and Business Transacted at Special Meetings**. Advance notice of stockholder nominations for the election of directors of the Corporation and of business to be brought by stockholders before any meeting of stockholders of the Corporation shall be given in the manner provided in the Bylaws. Business transacted at special meetings of stockholders shall be limited to the purpose or purposes stated in the notice of meeting.

## ARTICLE IX: CHOICE OF FORUM

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for: (a) any derivative action or proceeding brought on behalf of the Corporation; (b) any action asserting a claim of breach of a fiduciary duty owed by, or other wrongdoing by, any director, officer, stockholder, employee or agent of the Corporation to the Corporation or the Corporation's stockholders; (c) any action asserting a claim against the Corporation or any director, officer, stockholder, employee or agent of the Corporation arising pursuant to any provision of the General Corporation Law, this Certificate of Incorporation or the Bylaws or as to which the General Corporation Law confers jurisdiction on the Court of Chancery of the State of Delaware; (d) any action to interpret, apply, enforce or determine the validity of this Certificate of Incorporation or the Bylaws; or (e) any action asserting a claim against the Corporation or any director, officer, stockholder, employee or agent of the Corporation governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article IX.

## ARTICLE X: AMENDMENT OF CERTIFICATE OF INCORPORATION

If any provision of this Certificate of Incorporation shall be held to be invalid, illegal or unenforceable, then such provision shall nonetheless be enforced to the maximum extent possible consistent with such holding and the remaining provisions of this Certificate of Incorporation (including, without limitation, all portions of any section of this Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable, which is not invalid, illegal or unenforceable) shall remain in full force and effect.

The Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation in the manner prescribed by the laws of the State of Delaware and all rights conferred upon stockholders are granted subject to this reservation; *provided*, *however*, that, notwithstanding any other provision of this Certificate of Incorporation or any provision of law that might otherwise permit a lesser vote or no vote (but subject to the rights of any series of Preferred Stock set forth in any Certificate of Designation), but in addition to any vote of the holders of any class or series of the stock of the Corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least two-thirds of the voting power of all then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the

election of directors, voting together as a single class, shall be required to amend or repeal this Article X or Article V, Article VI, Article VII or Article VIII; *provided*, *further*, that if two-thirds of the Whole Board has approved such amendment or repeal of any provisions of this Certificate of Incorporation, then only the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class (in addition to any other vote of the holders of any class or series of stock of the Corporation required by law or by this Certificate of Incorporation or any Certificate of Designation), shall be required to amend or repeal such provisions of this Certificate of Incorporation.

*** * * * * * * * * ***

**Exhibit 3.5**

**DAY ONE BIOPHARMACEUTICALS, INC.**
(a Delaware corporation)

**RESTATED BYLAWS**

As Adopted [ ], 2021 and

As Effective [ ], 2021

**DAY ONE BIOPHARMACEUTICALS, INC.**
(a Delaware corporation)

**RESTATED BYLAWS**

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**DAY ONE BIOPHARMACEUTICALS, INC.**
(a Delaware corporation)

**RESTATED BYLAWS**

As Adopted [•], 2021 and
As Effective [•], 2021

## ARTICLE I: STOCKHOLDERS

**Section 1.1: Annual Meetings.** If required by applicable law, an annual meeting of stockholders shall be held for the election of directors at such date and time as the Board of Directors (the "***Board***") of Day One Biopharmaceuticals, Inc. (the "***Corporation***") shall each year fix. The meeting may be held either at a place, within or without the State of Delaware as permitted by the Delaware General Corporation Law (the "***DGCL***"), or by means of remote communication as the Board in its sole discretion may determine. Any proper business may be transacted at the annual meeting.

**Section 1.2: Special Meetings.** Special meetings of stockholders for any purpose or purposes shall be called in the manner set forth in the Restated Certificate of Incorporation of the Corporation (as the same may be amended and/or restated from time to time, the "***Certificate of Incorporation***"). The special meeting may be held either at a place, within or without the State of Delaware, or by means of remote communication as the Board in its sole discretion may determine. Business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of the meeting.

**Section 1.3: Notice of Meetings.** Notice of all meetings of stockholders shall be given in writing or by electronic transmission in the manner provided by applicable law (including, without limitation, as set forth in Section 7.1.1 of these Bylaws) stating the date, time and place, (if any) of the meeting, the means of remote communication (if any) by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting). In the case of a special meeting, such notice shall also set forth the purpose or purposes for which the meeting is called. Unless otherwise required by applicable law or the Certificate of Incorporation, notice of any meeting of stockholders shall be given not less than ten (10), nor more than sixty (60), days before the date of the meeting to each stockholder of record entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting.

**Section 1.4: Adjournments.** Notwithstanding Section 1.5 of these Bylaws, the chairperson of the meeting shall have the power to adjourn the meeting to another time, date and place (if any), regardless of whether a quorum is present, at any time and for any reason. Any meeting of stockholders, annual or special, may be adjourned from time to time, and notice need not be given of any such adjourned meeting if the time, date and place (if any) thereof and the means of remote communication (if any) by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; *provided*, *however*, that if the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If, after the adjournment, a new record date for determination of stockholders

entitled to vote is fixed for the adjourned meeting, the Board shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting. At the adjourned meeting, the Corporation may transact any business that might have been transacted at the original meeting. If a quorum is present at the original meeting, it shall also be deemed present at the adjourned meeting. To the fullest extent permitted by law, the Board may postpone, reschedule or cancel at any time and for any reason any previously scheduled special or annual meeting of stockholders before it is to be held, regardless of whether any notice or public disclosure with respect to any such meeting has been sent or made pursuant to Section 1.3 hereof or otherwise, in which case notice shall be provided to the stockholders of the new date, time and place (if any) of the meeting as provided in Section 1.3 above.

**Section 1.5: Quorum.** Except as otherwise provided by applicable law, the Certificate of Incorporation or these Bylaws, at each meeting of stockholders the holders of a majority of the voting power of the shares of stock issued and outstanding and entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business; *provided*, *however*, that where a separate vote by a class or classes or series of stock is required by applicable law or the Certificate of Incorporation, the holders of a majority of the voting power of the shares of such class or classes or series of the stock issued and outstanding and entitled to vote on such matter, present in person or represented by proxy at the meeting, shall constitute a quorum entitled to take action with respect to the vote on such matter. If a quorum shall fail to attend any meeting, the chairperson of the meeting or, if directed to be voted on by the chairperson of the meeting, the holders of a majority of the voting power of the shares entitled to vote who are present in person or represented by proxy at the meeting may adjourn the meeting. Shares of the Corporation's stock belonging to the Corporation (or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation are held, directly or indirectly, by the Corporation) shall neither be entitled to vote nor be counted for quorum purposes; *provided*, *however*, that the foregoing shall not limit the right of the Corporation or any other corporation to vote any shares of the Corporation's stock held by it in a fiduciary capacity and to count such shares for purposes of determining a quorum. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

**Section 1.6: Organization.** Meetings of stockholders shall be presided over by (a) such person as the Board may designate, or (b) in the absence of such a person, the Chairperson of the Board, or (c) in the absence of such person, the Lead Independent Director, or (d) in the absence of such person, the Chief Executive Officer of the Corporation, or (e) in the absence of such person, the President of the Corporation, or (f) in the absence of such person, by a Vice President of the Corporation. The Secretary of the Corporation shall act as secretary of the meeting, but in such person's absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

**Section 1.7: Voting; Proxies.** Each stockholder of record entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy. Such a proxy may be prepared, transmitted and delivered in any manner permitted by applicable law. Except as may be required in the Certificate of Incorporation, directors shall be elected by a plurality of the votes cast by the holders of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. At all meetings of stockholders at which a quorum is present, unless a different or minimum vote is required by applicable law, rule

or regulation applicable to the Corporation or its securities, the rules or regulations of any stock exchange applicable to the Corporation, the Certificate of Incorporation or these Bylaws, in which case such different or minimum vote shall be the applicable vote on the matter, every matter other than the election of directors shall be decided by the affirmative vote of the holders of a majority of the voting power of the shares of stock entitled to vote on such matter that are present in person or represented by proxy at the meeting and are voted for or against the matter (or if there are two or more classes or series of stock entitled to vote as separate classes, then in the case of each class or series, the holders of a majority of the voting power of the shares of stock of that class or series present in person or represented by proxy at the meeting voting for or against such matter).

**Section 1.8: Fixing Date for Determination of Stockholders of Record.** In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at 5:00 p.m. Eastern Time on the day next preceding the day on which notice is given, or, if notice is waived, at 5:00 p.m. Eastern Time on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided*, *however*, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board and which shall not be more than sixty (60) days prior to such action. If no such record date is fixed by the Board, then the record date for determining stockholders for any such purpose shall be at 5:00 p.m. Eastern Time on the day on which the Board adopts the resolution relating thereto.

**Section 1.9: List of Stockholders Entitled to Vote.** The Corporation shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of stockholders entitled to vote at the meeting (*provided*, *however*, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth (10th) day before the meeting date), arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least ten (10) days prior to the meeting, either (a) on a reasonably accessible electronic network as permitted by applicable law (*provided* that the information required to gain access to the list is provided with the notice of the meeting) or (b) during ordinary business hours, at the principal place of business of the Corporation. If the meeting is held at a location where stockholders may attend in person, a list of stockholders entitled

to vote at the meeting shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present at the meeting. If the meeting is held solely by means of remote communication, then the list shall be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access the list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 1.9 or to vote in person or by proxy at any meeting of stockholders.

**Section 1.10: Inspectors of Elections.**

1.10.1 Applicability. Unless otherwise required by the Certificate of Incorporation or by applicable law, the following provisions of this Section 1.10 shall apply only if and when the Corporation has a class of voting stock that is: (a) listed on a national securities exchange; (b) authorized for quotation on an interdealer quotation system of a registered national securities association; or (c) held of record by more than two thousand (2,000) stockholders. In all other cases, observance of the provisions of this Section 1.10 shall be optional, and at the discretion of the Board.

1.10.2 Appointment. The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors of election to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting.

1.10.3 Inspector's Oath. Each inspector of election, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability.

1.10.4 Duties of Inspectors. At a meeting of stockholders, the inspectors of election shall (a) ascertain the number of shares outstanding and the voting power of each share, (b) determine the shares represented at a meeting and the validity of proxies and ballots, (c) count all votes and ballots, (d) determine and retain for a reasonable period of time a record of the disposition of any challenges made to any determination by the inspectors and (e) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

1.10.5 Opening and Closing of Polls. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced by the chairperson of the meeting at the meeting. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery upon application by a stockholder shall determine otherwise.

1.10.6 Determinations. In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in connection with proxies pursuant to Section 211(a)(2)b.(i) of the DGCL, or in accordance with Sections 211(e) or 212(c)(2) of the DGCL, ballots and the regular books and records of the Corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent

more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification of their determinations pursuant to this Section 1.10 shall specify the precise information considered by them, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable.

**Section 1.11: Conduct of Meetings.** The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the person presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the presiding person of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; (e) limitations on the time allotted to questions or comments by participants; (f) restricting the use of audio/video recording devices and cell phones; and (g) complying with any state and local laws and regulations concerning safety and security. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

**Section 1.12: Notice of Stockholder Business; Nominations.**

1.12.1 Annual Meeting of Stockholders.

(a) Nominations of persons for election to the Board and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only: (i) pursuant to the Corporation's notice of such meeting (or any supplement thereto), (ii) by or at the direction of the Board or any committee thereof or (iii) by any stockholder of the Corporation who was a stockholder of record at the time of giving of the notice provided for in this Section 1.12 (the "***Record Stockholder***"), who is entitled to vote at such meeting and who complies with the notice and other procedures set forth in this Section 1.12 in all applicable respects. For the avoidance of doubt, the foregoing clause (iii) shall be the exclusive means for a stockholder to make nominations or propose business (other than business included in the Corporation's proxy materials pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (such act, and the rules and regulations promulgated thereunder, the "***Exchange Act***")), at an annual meeting of stockholders, and such stockholder must fully comply with the notice and other procedures set forth in this Section 1.12 to make such nominations or propose business before an annual meeting.

(b) For nominations or other business to be properly brought before an annual meeting by a Record Stockholder pursuant to Section 1.12.1(a) of these Bylaws:

(i) the Record Stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and provide any updates or supplements to such notice at the times and in the forms required by this Section 1.12;

(ii) such other business (other than the nomination of persons for election to the Board) must otherwise be a proper matter for stockholder action;

(iii) if the Proposing Person (as defined below) has provided the Corporation with a Solicitation Notice (as defined below), such Proposing Person must, in the case of a proposal other than the nomination of persons for election to the Board, have delivered a proxy statement and form of proxy to holders of at least the percentage of the Corporation's voting shares required under applicable law to carry any such proposal, or, in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to holders of a percentage of the Corporation's voting shares reasonably believed by such Proposing Person to be sufficient to elect the nominee or nominees proposed to be nominated by such Record Stockholder, and must, in either case, have included in such materials the Solicitation Notice; and

(iv) if no Solicitation Notice relating thereto has been timely provided pursuant to this Section 1.12, the Proposing Person proposing such business or nomination must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this Section 1.12.

To be timely, a Record Stockholder's notice must be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not later than 5:00 p.m. Eastern Time on the seventy-fifth (75th) day nor earlier than 5:00 p.m. Eastern Time on the one hundred and fifth (105th) day prior to the first anniversary of the preceding year's annual meeting (except in the case of the Corporation's first annual meeting following its initial public offering, for which such notice shall be timely if delivered in the same time period as if such meeting were a special meeting governed by Section 1.12.3 of these Bylaws); *provided*, *however*, that in the event that the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the Record Stockholder to be timely must be so delivered (A) no earlier than 5:00 p.m. Eastern Time on the one hundred and fifth (105th) day prior to such annual meeting and (B) no later than 5:00 p.m. Eastern Time on the later of the ninetieth (90th) day prior to such annual meeting or 5:00 p.m. Eastern Time on the tenth (10th) day following the day on which Public Announcement (as defined below) of the date of such meeting is first made by the Corporation. In no event shall an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for providing the Record Stockholder's notice.

(c) As to each person whom the Record Stockholder proposes to nominate for election or reelection as a director, in addition to the matters set forth in paragraph (e) below, such Record Stockholder's notice shall set forth:

(i) the name, age, business address and residence address of such person;

(ii) the principal occupation or employment of such nominee;

(iii) the class, series and number of any shares of stock of the Corporation that are beneficially owned or owned of record by such person or any Associated Person (as defined in Section 1.12.4(c));

(iv) the date or dates such shares were acquired and the investment intent of such acquisition;

(v) all other information relating to such person that would be required to be disclosed in solicitations of proxies for election of directors in an election contest (even if an election contest is not involved), or would be otherwise required, in each case pursuant to and in accordance with Section 14(a) (or any successor provision) under the Exchange Act and the rules and regulations thereunder;

(vi) such person's written consent to being named in the Corporation's proxy statement as a nominee, to the public disclosure of information regarding or related to such person provided to the Corporation by such person or otherwise pursuant to this Section 1.12 and to serving as a director if elected;

(vii) whether such person meets the independence requirements of the stock exchange upon which the Corporation's Common Stock is primarily traded;

(viii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three (3) years, and any other material relationships, between or among such Proposing Person or any of its respective affiliates and associates, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, on the other hand, including all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the Proposing Person or any of its respective affiliates and associates were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; and

(ix) a completed and signed questionnaire, representation and agreement required by Section 1.12.2 of these Bylaws.

(d) As to any business other than the nomination of a director or directors that the Record Stockholder proposes to bring before the meeting, in addition to the matters set forth in paragraph (e) below, such Record Stockholder's notice shall set forth:

(i) a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws, the text of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such Proposing Person, including any anticipated benefit to any Proposing Person therefrom; and

(ii) a description of all agreements, arrangements and understandings between or among any such Proposing Person and any of its respective affiliates or associates, on the one hand, and any other person or persons, on the other hand, (including their names) in connection with the proposal of such business by such Proposing Person.

(e) As to each Proposing Person giving the notice, such Record Stockholder's notice shall set forth:

(i) the current name and address of such Proposing Person, including, if applicable, their name and address as they appear on the Corporation's stock ledger, if different;

(ii) the class or series and number of shares of stock of the Corporation that are directly or indirectly owned of record or beneficially owned by such Proposing Person, including any shares of any class or series of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future;

(iii) whether and the extent to which any derivative interest in the Corporation's equity securities (including without limitation any option, warrant, convertible security, stock appreciation right or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of shares of the Corporation or otherwise, and any cash-settled equity swap, total return swap, synthetic equity position or similar derivative arrangement (any of the foregoing, a "***Derivative Instrument***"), as well as any rights to dividends on the shares of any class or series of shares of the Corporation that are separated or separable from the underlying shares of the Corporation) or any short interest in any security of the Corporation (for purposes of this Bylaw a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any increase or decrease in the value of the subject security, including through performance-related fees) is held directly or indirectly by or for the benefit of such Proposing Person, including without limitation whether and the extent to which any ongoing hedging or other transaction or series of transactions has been entered into by or on behalf of, or any other agreement, arrangement or understanding (including without limitation any short position or any borrowing or lending of shares) has been made, the effect or intent of which is to mitigate loss to or manage risk or benefit of share price changes for, or to increase or decrease the voting power of, such Proposing Person with respect to any share of stock of the Corporation (any of the foregoing, a "***Short Interest***");

(iv) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such Proposing Person or any of its respective affiliates or associates is a general partner or, directly or indirectly, beneficially owns an interest in a general partner of such general or limited partnership;

(v) any direct or indirect material interest in any material contract or agreement with the Corporation, any affiliate of the Corporation or any Competitor (as defined below) (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement);

(vi) any significant equity interests or any Derivative Instruments or Short Interests in any Competitor held by such Proposing Person and/or any of its respective affiliates or associates;

(vii) any other material relationship between such Proposing Person, on the one hand, and the Corporation, any affiliate of the Corporation or any Competitor, on the other hand;

(viii) all information that would be required to be set forth in a Schedule 13D filed pursuant to Rule 13d-1(a) or an amendment pursuant to Rule 13d-2(a) if such a statement were required to be filed under the Exchange Act and the rules and regulations promulgated thereunder by such Proposing Person and/or any of its respective affiliates or associates;

(ix) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14(a) (or any successor provision) under the Exchange Act and the rules and regulations thereunder;

(x) such Proposing Person's written consent to the public disclosure of information provided to the Corporation pursuant to this Section 1.12;

(xi) a complete written description of any agreement, arrangement or understanding (whether oral or in writing) (including any knowledge that another person or entity is Acting in Concert (as defined in Section 1.12.4(c)) with such Proposing Person) between or among such Proposing Person, any of its respective affiliates or associates and any other person Acting in Concert with any of the foregoing persons;

(xii) a representation that the Record Stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination;

(xiii) a representation whether such Proposing Person intends (or is part of a group that intends) to deliver a proxy statement or form of proxy to holders of, in the case of a proposal, at least the percentage of the Corporation's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the Corporation's voting shares to elect such nominee or nominees (an affirmative statement of such intent being a "***Solicitation Notice***"); and

(xiv) any proxy, contract, arrangement or relationship pursuant to which the Proposing Person has a right to vote, directly or indirectly, any shares of any security of the Corporation.

The disclosures to be made pursuant to the foregoing clauses (ii), (iii), (iv) and (vi) shall not include any information with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner.

(f) A stockholder providing written notice required by this Section 1.12 shall update such notice in writing, if necessary, so that the information provided or required to be provided in such notice is true and correct in all material respects as of (i) the record date for determining the stockholders entitled to notice of the meeting and (ii) 5:00 p.m. Eastern Time on the tenth (10th) business day prior to the meeting or any adjournment or postponement thereof. In the case of an update pursuant to clause (i) of the foregoing sentence, such update shall be received by the

Secretary of the Corporation at the principal executive office of the Corporation not later than five (5) business days after the record date for determining the stockholders entitled to notice of the meeting, and in the case of an update and supplement pursuant to clause (ii) of the foregoing sentence, such update and supplement shall be received by the Secretary of the Corporation at the principal executive office of the Corporation not later than eight (8) business days prior to the date for the meeting and, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed). For the avoidance of doubt, the obligation to update as set forth in this paragraph shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any proposal or nomination or to submit any new proposal, including by changing or adding nominees, matters, business and/or resolutions proposed to be brought before a meeting of the stockholders.

(g) Notwithstanding anything in Section 1.12 or any other provision of these Bylaws to the contrary, any person who has been determined by a majority of the Whole Board to have violated Section 2.11 of these Bylaws or a Board Confidentiality Policy (as defined below) while serving as a director of the Corporation in the preceding five (5) years shall be ineligible to be nominated or be qualified to serve as a member of the Board, absent a prior waiver for such nomination or qualification approved by two-thirds of the Whole Board.

1.12.2 Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee of any stockholder for election or reelection as a director of the Corporation, the person proposed to be nominated must deliver (in accordance with the time periods prescribed for delivery of notice under Section 1.12 of these Bylaws) to the Secretary of the Corporation at the principal executive offices of the Corporation a completed and signed questionnaire in the form required by the Corporation (which form the stockholder shall request in writing from the Secretary of the Corporation and which the Secretary shall provide to such stockholder within ten days of receiving such request) with respect to the background and qualification of such person to serve as a director of the Corporation and the background of any other person or entity on whose behalf, directly or indirectly, the nomination is being made and a signed representation and agreement (in the form available from the Secretary upon written request) that such person: (a) is not and will not become a party to (i) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "***Voting Commitment***") that has not been disclosed to the Corporation or (ii) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (b) is not and will not become a party to any Compensation Arrangement (as defined below) that has not been disclosed therein, (c) if elected as a director of the Corporation, will comply with all informational and similar requirements of applicable insurance policies and laws and regulations in connection with service or action as a director of the Corporation, (d) if elected as a director of the Corporation, will comply with all corporate governance, conflict of interest, stock ownership requirements, confidentiality and trading policies and guidelines of the Corporation publicly disclosed from time to time, (e) if elected as a director of the Corporation, will act in the best interests of the Corporation and its stockholders and not in the interests of individual constituencies, (f) consents to being named as a nominee in the Corporation's proxy statement pursuant to Rule 14a-4(d) under the Exchange Act and any associated proxy card of the Corporation and agrees to serve if elected as a director and (g) intends to serve as a director for the full term for which such individual is to stand for election.

1.12.3 Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of such meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of such meeting (a) by or at the direction of the Board or any committee thereof or (b) *provided* that the Board has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice of the special meeting, who shall be entitled to vote at the meeting and who complies with the notice and other procedures set forth in this Section 1.12 in all applicable respects. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by Section 1.12.1(b) of these Bylaws shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation (i) no earlier than the one hundred and fifth (105th) day prior to such special meeting and (ii) no later than 5:00 p.m. Eastern Time on the later of the seventy-fifth (75th) day prior to such special meeting or the tenth (10th) day following the day on which Public Announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. In no event shall an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for providing such notice.

1.12.4 General.

(a) Except as otherwise expressly provided in any applicable rule or regulation promulgated under the Exchange Act, only such persons who are nominated in accordance with the procedures set forth in this Section 1.12 shall be eligible to be elected at a meeting of stockholders and serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 1.12. Except as otherwise provided by law or these Bylaws, the chairperson of the meeting shall have the power and duty to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 1.12 and, if any proposed nomination or business is not in compliance herewith, to declare that such defective proposal or nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section 1.12, unless otherwise required by law, if the stockholder (or a Qualified Representative of the stockholder (as defined below)) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

(b) Notwithstanding the foregoing provisions of this Section 1.12, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein. Nothing in this Section 1.12 shall be deemed to affect any rights of (a) stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (b) the holders of any series of the Corporation's Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

(c) For purposes of these Bylaws the following definitions shall apply:

(A) a person shall be deemed to be "***Acting in Concert***" with another person if such person knowingly acts (whether or not pursuant to an express agreement, arrangement or understanding) in concert with, or toward a common goal relating to the management, governance or control of the Corporation in substantial parallel with, such other person where (1) each person is conscious of the other person's conduct or intent and this awareness is an element in their decision-making processes and (2) at least one additional factor suggests that such persons intend to act in concert or in substantial parallel, which such additional factors may include, without limitation, exchanging information (whether publicly or privately), attending meetings, conducting discussions or making or soliciting invitations to act in concert or in substantial parallel; *provided* that a person shall not be deemed to be Acting in Concert with any other person solely as a result of the solicitation or receipt of revocable proxies or consents from such other person in response to a solicitation made pursuant to, and in accordance with, Section 14(a) (or any successor provision) of the Exchange Act by way of a proxy or consent solicitation statement filed on Schedule 14A. A person Acting in Concert with another person shall be deemed to be Acting in Concert with any third party who is also Acting in Concert with such other person;

(B) "***affiliate***" and "***associate***" shall have the meanings ascribed thereto in Rule 405 under the Securities Act of 1933, as amended (the "***Securities Act***"); *provided*, *however*, that the term "partner" as used in the definition of "associate" shall not include any limited partner that is not involved in the management of the relevant partnership;

(C) "***Associated Person***" shall mean with respect to any subject stockholder or other person (including any proposed nominee) (1) any person directly or indirectly controlling, controlled by or under common control with such stockholder or other person, (2) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder or other person, (3) any associate of such stockholder or other person and (4) any person directly or indirectly controlling, controlled by or under common control or Acting in Concert with any such Associated Person;

(D) "***Compensation Arrangement***" shall mean any direct or indirect compensatory payment or other financial agreement, arrangement or understanding with any person or entity other than the Corporation, including any agreement, arrangement or understanding with respect to any direct or indirect compensation, reimbursement or indemnification in connection with candidacy, nomination, service or action as a nominee or as a director of the Corporation;

(E) "***Competitor***" shall mean any entity that provides products or services that compete with or are alternatives to the principal products produced or services provided by the Corporation or its affiliates;

(F) "***Proposing Person***" shall mean (1) the Record Stockholder providing the notice of business proposed to be brought before an annual meeting or nomination of persons for election to the Board at a stockholder meeting, (2) the

beneficial owner or beneficial owners, if different, on whose behalf the notice of business proposed to be brought before the annual meeting or nomination of persons for election to the Board at a stockholder meeting is made and (3) any Associated Person on whose behalf the notice of business proposed to be brought before the annual meeting or nomination of persons for election to the Board at a stockholder meeting is made;

(G) "***Public Announcement***" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act; and

(H) to be considered a "***Qualified Representative***" of a stockholder, a person must be a duly authorized officer, manager, trustee or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as a proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction thereof, at the meeting. The Secretary of the Corporation, or any other person who shall be appointed to serve as secretary of the meeting, may require, on behalf of the Corporation, reasonable and appropriate documentation to verify the status of a person purporting to be a "Qualified Representative" for purposes hereof.

## ARTICLE II: BOARD OF DIRECTORS

**Section 2.1: Number; Qualifications.** The total number of directors constituting the Whole Board shall be fixed from time to time in the manner set forth in the Certificate of Incorporation and the term "***Whole Board***" shall have the meaning specified in the Certificate of Incorporation. No decrease in the authorized number of directors constituting the Whole Board shall shorten the term of any incumbent director. Directors need not be stockholders of the Corporation.

**Section 2.2: Election; Resignation; Removal; Vacancies.** Election of directors need not be by written ballot. Each director shall hold office until the annual meeting at which such director's term expires and until such director's successor is elected and qualified or until such director's earlier death, resignation, disqualification or removal. Any director may resign by delivering a resignation in writing or by electronic transmission to the Corporation at its principal office or to the Chairperson of the Board, the Chief Executive Officer or the Secretary. Such resignation shall be effective upon delivery unless it is specified to be effective at a later time or upon the happening of an event. Subject to the special rights of holders of any series of the Corporation's Preferred Stock to elect directors, directors may be removed only as provided by the Certificate of Incorporation and applicable law. All vacancies occurring in the Board and any newly created directorships resulting from any increase in the authorized number of directors shall be filled in the manner set forth in the Certificate of Incorporation.

**Section 2.3: Regular Meetings.** Regular meetings of the Board may be held at such places, within or without the State of Delaware, and at such times as the Board may from time to time determine. Notice of regular meetings need not be given if the date, times and places thereof are fixed by resolution of the Board.

**Section 2.4: Special Meetings.** Special meetings of the Board may be called by the Chairperson of the Board, the Chief Executive Officer, the Lead Independent Director or a majority of the members of the Board then in office and may be held at any time, date or place, within or without the State of Delaware, as the person or persons calling the meeting shall fix. Notice of the time, date and place of such meeting shall be given orally, in writing or by electronic transmission (including electronic mail), by the person or persons calling the meeting to all directors at least four (4) days before the meeting if the notice is mailed, or at least twenty-four (24) hours before the meeting if such notice is given by telephone, hand delivery, telegram, telex, mailgram, facsimile, electronic mail or other means of electronic transmission; *provided*, *however*, that if, under the circumstances, the Chairperson of the Board, the Lead Independent Director or the Chief Executive Officer calling a special meeting deems that more immediate action is necessary or appropriate, notice may be delivered on the day of such special meeting. Unless otherwise indicated in the notice, any and all business may be transacted at a special meeting.

**Section 2.5: Remote Meetings Permitted.** Members of the Board, or any committee of the Board, may participate in a meeting of the Board or such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to conference telephone or other communications equipment shall constitute presence in person at such meeting.

**Section 2.6: Quorum; Vote Required for Action.** At all meetings of the Board, a majority of the Whole Board shall constitute a quorum for the transaction of business. If a quorum shall fail to attend any meeting, a majority of those present may adjourn the meeting to another place, date or time. Except as otherwise provided herein or in the Certificate of Incorporation, or required by law, the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board.

**Section 2.7: Organization.** Meetings of the Board shall be presided over by (a) the Chairperson of the Board, or (b) in the absence of such person, the Lead Independent Director, or (c) in such person's absence, by the Chief Executive Officer, or (d) in such person's absence, by a chairperson chosen by the Board at the meeting. The Secretary of the Corporation shall act as secretary of the meeting, but in such person's absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

**Section 2.8: Unanimous Action by Directors in Lieu of a Meeting.** Any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee, as applicable. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

**Section 2.9: Powers.** Except as otherwise provided by the Certificate of Incorporation or the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board.

**Section 2.10: Compensation of Directors.** Members of the Board, as such, may receive, pursuant to a resolution of the Board, fees and other compensation for their services as directors, including without limitation their services as members of committees of the Board.

**Section 2.11: Confidentiality.** Each director shall maintain the confidentiality of, and shall not share with any third-party person or entity (including third parties that originally sponsored, nominated or designated such director (the "***Sponsoring Party***")), any non-public information learned in their capacities as directors, including communications among Board members in their capacities as directors, *provided* that directors that are originally nominated or designated by a Sponsoring Party may disclose such information to the Sponsoring Party (or the management company of the Sponsoring Party) if the Sponsoring Party (or the management company of the Sponsoring Party) has applicable confidentiality restrictions in place. The Board may adopt a board confidentiality policy further implementing and interpreting this Section 2.11 (a "***Board Confidentiality Policy***"). Other than as provided in the first section of this Section 2.11, all directors are required to comply with this Section 2.11 and any Board Confidentiality Policy unless such director or the Sponsoring Party for such director has entered into a specific written agreement with the Corporation, in either case as approved by the Board, providing otherwise with respect to such confidential information.

## ARTICLE III: COMMITTEES

**Section 3.1: Committees.** The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting of such committee who are not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent provided in a resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority in reference to the following matters: (a) approving, adopting or recommending to the stockholders any action or matter (other than the election or removal of members of the Board) expressly required by the DGCL to be submitted to stockholders for approval or (b) adopting, amending or repealing any bylaw of the Corporation.

**Section 3.2: Committee Rules.** Each committee shall keep records of its proceedings and make such reports as the Board may from time to time request. Unless the Board otherwise provides, each committee designated by the Board may make, alter and repeal rules for the conduct of its business. In the absence of such rules, each committee shall conduct its business in the same manner as the Board conducts its business pursuant to Article II of these Bylaws. Except as otherwise provided in the Certificate of Incorporation, these Bylaws or the resolution of the Board designating the committee, any committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and may delegate to any such subcommittee any or all of the powers and authority of the committee.

## ARTICLE IV: OFFICERS; CHAIRPERSON; LEAD INDEPENDENT DIRECTOR

**Section 4.1: Generally.** The officers of the Corporation shall consist of a Chief Executive Officer (who may be the Chairperson of the Board or the President), a President, a Secretary and a Treasurer and may consist of such other officers, including, without limitation, a Chief Financial Officer, and one or more Vice Presidents, as may from time to time be appointed by the Board. All officers shall be elected by the Board; *provided*, *however*, that the Board may

empower the Chief Executive Officer of the Corporation to appoint any officer other than the Chief Executive Officer, the President, the Chief Financial Officer or the Treasurer. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, each officer shall hold office until such officer's successor is duly elected and qualified or until such officer's earlier resignation, death, disqualification or removal. Any number of offices may be held by the same person. Any officer may resign by delivering a resignation in writing or by electronic transmission to the Corporation at its principal office or to the Chairperson of the Board, the Chief Executive Officer or the Secretary. Such resignation shall be effective upon delivery unless it is specified to be effective at some later time or upon the happening of some later event. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled by the Board and the Board may, in its discretion, leave unfilled, for such period as it may determine, any offices. Each such successor shall hold office for the unexpired term of such officer's predecessor and until a successor is duly elected and qualified or until such officer's earlier resignation, death, disqualification or removal.

**Section 4.2: Chief Executive Officer.** Subject to the control of the Board and such supervisory powers (if any) as may be given by the Board, the powers and duties of the Chief Executive Officer of the Corporation are:

(a) to act as the general manager and, subject to the control of the Board, to have general supervision, direction and control of the business and affairs of the Corporation;

(b) subject to Section 1.6 of these Bylaws, to preside at all meetings of the stockholders;

(c) subject to Section 1.2 of these Bylaws, to call special meetings of the stockholders to be held at such times and, subject to the limitations prescribed by law or by these Bylaws, at such places as he or she shall deem proper; and

(d) to affix the signature of the Corporation to all deeds, conveyances, mortgages, guarantees, leases, obligations, bonds, certificates and other papers and instruments in writing which have been authorized by the Board or which, in the judgment of the Chief Executive Officer, should be executed on behalf of the Corporation; to sign certificates for shares of stock of the Corporation (if any); and, subject to the direction of the Board, to have general charge of the property of the Corporation and to supervise and control all officers, agents and employees of the Corporation.

The person holding the office of President shall be the Chief Executive Officer of the Corporation unless the Board shall designate another officer to be the Chief Executive Officer.

**Section 4.3: Chairperson of the Board.** Subject to the provisions of Section 2.7 of these Bylaws, the Chairperson of the Board shall have the power to preside at all meetings of the Board and shall have such other powers and duties as provided in these Bylaws and as the Board may from time to time prescribe. The Chairperson of the Board may or may not be an officer of the Corporation.

**Section 4.4: Lead Independent Director.** The Board may, in its discretion, elect a lead independent director from among its members that are Independent Directors (as defined below) (such director, the "***Lead Independent Director***"). The Lead Independent Director shall preside at all meetings at which the Chairperson of the Board is not present and shall exercise such other powers and duties as may from time to time be assigned to him or her by the Board or as prescribed by these Bylaws. For purposes of these Bylaws, "***Independent Director***" has the meaning ascribed to such term under the rules of the exchange upon which the Corporation's Common Stock is primarily traded.

**Section 4.5: President.** The person holding the office of Chief Executive Officer shall be the President of the Corporation unless the Board shall have designated one individual as the President and a different individual as the Chief Executive Officer of the Corporation. Subject to the provisions of these Bylaws and to the direction of the Board, and subject to the supervisory powers of the Chief Executive Officer (if the Chief Executive Officer is an officer other than the President), and subject to such supervisory powers and authority as may be given by the Board to the Chairperson of the Board, and/or to any other officer, the President shall have the responsibility for the general management and control of the business and affairs of the Corporation and the general supervision and direction of all of the officers, employees and agents of the Corporation (other than the Chief Executive Officer, if the Chief Executive Officer is an officer other than the President) and shall perform all duties and have all powers that are commonly incident to the office of President or that are delegated to the President by the Board.

**Section 4.6: Chief Financial Officer.** The person holding the office of Chief Financial Officer shall be the Treasurer of the Corporation unless the Board shall have designated another officer as the Treasurer of the Corporation. Subject to the direction of the Board and the Chief Executive Officer, the Chief Financial Officer shall perform all duties and have all powers that are commonly incident to the office of Chief Financial Officer, or as the Board or the Chief Executive Officer may from time to time prescribe.

**Section 4.7: Treasurer.** The person holding the office of Treasurer shall be the Chief Financial Officer of the Corporation unless the Board shall have designated another officer as the Chief Financial Officer of the Corporation. The Treasurer shall have custody of all monies and securities of the Corporation. The Treasurer shall make such disbursements of the funds of the Corporation as are authorized and shall render from time to time an account of all such transactions. The Treasurer shall also perform such other duties and have such other powers as are commonly incident to the office of Treasurer, or as the Board or the Chief Executive Officer may from time to time prescribe.

**Section 4.8: Vice President.** Each Vice President shall have all such powers and duties as are commonly incident to the office of Vice President or that are delegated to him or her by the Board or the Chief Executive Officer. A Vice President may be designated by the Board to perform the duties and exercise the powers of the Chief Executive Officer or President in the event of the Chief Executive Officer's or President's absence or disability.

**Section 4.9: Secretary.** The Secretary shall issue or cause to be issued all authorized notices for, and shall keep, or cause to be kept, minutes of all meetings of the stockholders and the Board. The Secretary shall have charge of the corporate minute books and similar records and shall perform such other duties and have such other powers as are commonly incident to the office of Secretary, or as the Board or the Chief Executive Officer may from time to time prescribe.

**Section 4.10: Delegation of Authority.** The Board may from time to time delegate the powers or duties of any officer of the Corporation to any other officers or agents of the Corporation, notwithstanding any provision hereof.

**Section 4.11: Removal.** Any officer of the Corporation shall serve at the pleasure of the Board and may be removed at any time, with or without cause, by the Board; *provided* that if the Board has empowered the Chief Executive Officer to appoint any officer of the Corporation, then such officer may also be removed by the Chief Executive Officer. Such removal shall be without prejudice to the contractual rights of such officer (if any) with the Corporation.

## ARTICLE V: STOCK

**Section 5.1: Certificates; Uncertificated Shares.** The shares of capital stock of the Corporation shall be uncertificated shares; *provided*, *however*, that the resolution of the Board that the shares of capital stock of the Corporation shall be uncertificated shares shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation (or the transfer agent or registrar, as the case may be). Notwithstanding the foregoing, the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be certificated shares. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of, the Corporation, by any two authorized officers of the Corporation (it being understood that each of the Chairperson of the Board, the Vice-Chairperson of the Board, the Chief Executive Officer, the President, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary and any Assistant Secretary shall be an authorized officer for such purpose), representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were an officer, transfer agent or registrar at the date of issue.

**Section 5.2: Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates or Uncertificated Shares.** The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate previously issued by it, alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to agree to indemnify the Corporation and/or to give the Corporation a bond sufficient to indemnify it, against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

**Section 5.3: Other Regulations**. Subject to applicable law, the Certificate of Incorporation and these Bylaws, the issue, transfer, conversion and registration of shares represented by certificates and of uncertificated shares shall be governed by such other regulations as the Board may establish.

## ARTICLE VI: INDEMNIFICATION

**Section 6.1: Indemnification of Officers and Directors.** Each person who was or is made a party to, or is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, legislative, investigative or any other type whatsoever, preliminary, informal or formal, including any arbitration or other alternative dispute resolution (including but not limited to giving testimony or responding to a subpoena) and including any appeal of any of the foregoing (a "***Proceeding***"), by reason of the fact that such person (or a person of whom such person is the legal representative), is or was a director or officer of the Corporation or a Reincorporated Predecessor (as defined below) or, while serving as a director or officer of the Corporation or a Reincorporated

Predecessor, is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation, or of a partnership, joint venture, trust or other enterprise or non-profit entity, including service with respect to employee benefit plans (for purposes of this Article VI, an "***Indemnitee***"), shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the DGCL as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expenses, costs, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such Indemnitee in connection therewith. Such indemnification shall continue as to an Indemnitee who has ceased to be a director or officer of the Corporation or a Reincorporated Predecessor (as defined below) or, while serving as a director or officer of the Corporation or a Reincorporated Predecessor, is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation, or of a partnership, joint venture, trust or other enterprise or non-profit entity, including service with respect to employee benefit plans and shall inure to the benefit of such Indemnitees' heirs, executors and administrators. Notwithstanding the foregoing, subject to Section 6.5 of this Article VI, the Corporation shall indemnify any such Indemnitee seeking indemnity in connection with a Proceeding (or part thereof) initiated by such Indemnitee only if such Proceeding (or part thereof) was authorized by the Board or such indemnification is authorized by an agreement approved by the Board. As used herein, the term the "***Reincorporated Predecessor***" means a corporation that is merged with and into the Corporation in a statutory merger where (a) the Corporation is the surviving corporation of such merger; or (b) the primary purpose of such merger is to change the corporate domicile of the Reincorporated Predecessor to Delaware.

**Section 6.2: Advancement of Expenses.** Notwithstanding any other provision of these Bylaws, the Corporation shall pay all reasonable expenses (including attorneys' fees) incurred by an Indemnitee in defending any Proceeding in advance of its final disposition; *provided*, *however*, that if the DGCL then so requires, the advancement of such expenses (i.e., payment of such expenses as incurred or otherwise in advance of the final disposition of the Proceeding) shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such Indemnitee, to repay such amounts if it shall ultimately be determined by a court of competent jurisdiction in a final judgment not subject to appeal that such Indemnitee is not entitled to be indemnified under this Article VI or otherwise. Any advances of expenses or undertakings to repay pursuant to this Section 6.2 shall be unsecured, interest free and without regard to Indemnitee's ability to pay.

**Section 6.3: Non-Exclusivity of Rights.** The rights conferred on any person in this Article VI shall not be exclusive of any other right that such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote or consent of stockholders or disinterested directors, or otherwise. Additionally, nothing in this Article VI shall limit the ability of the Corporation, in its discretion, to indemnify or advance expenses to persons whom the Corporation is not obligated to indemnify or advance expenses pursuant to this Article VI.

**Section 6.4: Indemnification Contracts.** The Board is authorized to cause the Corporation to enter into indemnification contracts with any director, officer, employee or agent of the Corporation, or any person serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation, partnership, joint venture, trust or other enterprise or non-profit entity, including employee benefit plans, providing indemnification or advancement rights to such person. Such rights may be greater than those provided in this Article VI.

**Section 6.5: Right of Indemnitee to Bring Suit.**

6.5.1 Right to Bring Suit. If a claim under Section 6.1 or 6.2 of this Article VI is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the Indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If the Indemnitee is successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Indemnitee also shall be entitled to be paid, to the fullest extent permitted by law, the expense of prosecuting or defending such suit.

6.5.2 Effect of Determination. Neither the absence of a determination prior to the commencement of such suit that indemnification of or the providing of advancement to the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in applicable law, nor an actual determination that the Indemnitee has not met such applicable standard of conduct, shall create a presumption that the Indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the Indemnitee, be a defense to such suit.

6.5.3 Burden of Proof. In any suit brought by the Indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VI, or otherwise, shall be on the Corporation.

**Section 6.6: Nature of Rights.** The rights conferred upon Indemnitees in this Article VI shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be a director or officer and shall inure to the benefit of the Indemnitee's heirs, executors and administrators.

**Section 6.7: Amendment or Repeal**. Any amendment, repeal or modification of any provision of this Article VI that adversely affects any right of an Indemnitee or an Indemnitee's successors shall be prospective only, and shall not adversely affect any right or protection conferred on a person pursuant to this Article VI and existing at the time of such amendment, repeal or modification.

**Section 6.8: Insurance.** The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise or non-profit entity against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

## ARTICLE VII: NOTICES

**Section 7.1: Notice.**

7.1.1 Form and Delivery. Except as otherwise specifically required in these Bylaws (including, without limitation, Section 7.1.2 of these Bylaws) or by applicable law, all notices required to be given pursuant to these Bylaws may (a) in every instance in connection with any delivery to a member of the Board, be effectively given by hand delivery (including use of a delivery service), by depositing such notice in the mail, postage prepaid, or by sending such notice by overnight express courier, facsimile, electronic mail or other form of electronic transmission and (b) be effectively delivered to a stockholder when given by hand delivery, by depositing such notice in the mail, postage prepaid, or, if specifically consented to by the stockholder as described in Section 7.1.2 of these Bylaws, by sending such notice by facsimile, electronic mail or other form of electronic transmission. Any such notice shall be addressed to the person to whom notice is to be given at such person's address as it appears on the records of the Corporation. The notice shall be deemed given (a) in the case of hand delivery, when received by the person to whom notice is to be given or by any person accepting such notice on behalf of such person, (b) in the case of delivery by mail, upon deposit in the mail, (c) in the case of delivery by overnight express courier, when dispatched, and (d) in the case of delivery via facsimile, electronic mail or other form of electronic transmission, at the time provided in Section 7.1.2 of these Bylaws.

7.1.2 Electronic Transmission. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these Bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given in accordance with Section 232 of the DGCL. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any such consent shall be deemed revoked if (a) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (b) such inability becomes known to the Secretary or an Assistant Secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice; *provided*, *however*, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given pursuant to this Section 7.1.2 shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of such posting and the giving of such separate notice; and (iv) if by any other form of electronic transmission, when directed to the stockholder.

7.1.3 Affidavit of Giving Notice. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Corporation that the notice has been given in writing or by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

**Section 7.2: Waiver of Notice.** Whenever notice is required to be given under any provision of the DGCL, the Certificate of Incorporation or these Bylaws, a written waiver of notice, signed by the person entitled to notice, or waiver by electronic transmission by such person, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any waiver of notice.

## ARTICLE VIII: INTERESTED DIRECTORS

**Section 8.1: Interested Directors.** No contract or transaction between the Corporation and one or more of its members of the Board or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are members of the board of directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee thereof that authorizes the contract or transaction, or solely because his, her or their votes are counted for such purpose, if: (a) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; (b) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (c) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board, a committee thereof, or the stockholders.

**Section 8.2: Quorum**. Interested directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which authorizes the contract or transaction.

## ARTICLE IX: MISCELLANEOUS

**Section 9.1: Fiscal Year.** The fiscal year of the Corporation shall be determined by resolution of the Board.

**Section 9.2: Seal.** The Board may provide for a corporate seal, which may have the name of the Corporation inscribed thereon and shall otherwise be in such form as may be approved from time to time by the Board.

**Section 9.3: Form of Records.** Any records administered by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on or by means of, or be in the form of, any other information storage device, method or one or more electronic networks or databases (including one or more distributed electronic networks or databases), electronic or otherwise, *provided* that the records so kept can be converted into clearly legible paper form within a reasonable time and otherwise comply with the DGCL. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to any provision of the DGCL.

**Section 9.4: Reliance Upon Books and Records.** A member of the Board, or a member of any committee designated by the Board shall, in the performance of such person's duties, be fully protected in relying in good faith upon the books and records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees of the Board, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

**Section 9.5: Certificate of Incorporation Governs.** In the event of any conflict between the provisions of the Certificate of Incorporation and these Bylaws, the provisions of the Certificate of Incorporation shall govern.

**Section 9.6: Severability.** If any provision of these Bylaws shall be held to be invalid, illegal, unenforceable or in conflict with the provisions of the Certificate of Incorporation, then such provision shall nonetheless be enforced to the maximum extent possible consistent with such holding and the remaining provisions of these Bylaws (including without limitation, all portions of any section of these Bylaws containing any such provision held to be invalid, illegal, unenforceable or in conflict with the Certificate of Incorporation, that are not themselves invalid, illegal, unenforceable or in conflict with the Certificate of Incorporation) shall remain in full force and effect.

**Section 9.7: Time Periods.** In applying any provision of these Bylaws which requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

## ARTICLE X: AMENDMENT

Notwithstanding any other provision of these Bylaws, any alteration, amendment or repeal of these Bylaws, and any adoption of new Bylaws, shall require the approval of the Board or the stockholders of the Corporation as expressly provided in the Certificate of Incorporation.

## ARTICLE XI: EXCLUSIVE FORUM

Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act, including all causes of action asserted against any defendant named in such complaint. For the avoidance of doubt, this provision is intended to benefit and may be enforced by us, our officers and directors, the underwriters to any offering giving rise to such complaint, and any other professional entity whose profession gives authority to a statement made by that person or entity and who has prepared or certified any part of the documents underlying the offering. Any person or entity purchasing or otherwise acquiring or holding any interest in any security of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XI.

**CERTIFICATION OF RESTATED BYLAWS**
**OF**
**DAY ONE BIOPHARMACEUTICALS, INC.**
a Delaware Corporation

I, Charles York II, certify that I am Secretary of Day One Biopharmaceuticals, Inc., a Delaware corporation (the "***Corporation***"), that I am duly authorized to make and deliver this certification, that the attached Bylaws are a true and complete copy of the Restated Bylaws of the Corporation in effect as of the date of this certificate.

Dated: [____], 2021

Charles York II
Chief Operating Officer, Chief Financial Officer
and Secretary

**EXHIBIT 4.2**

***Execution Version***

**AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT**

**THIS AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT** (this "***Agreement***"), is made as of February 1, 2021, by and among Day One Biopharmaceuticals Holding Company, LLC, a Delaware limited liability company (the "***Company***"), and each of the Persons listed on **Schedule A** hereto.

**RECITALS:**

**WHEREAS**, the Company and certain of the Investors (the "***Existing Investors***") previously entered into that certain Investors' Rights Agreement dated as of December 16, 2019 (the "***Prior Agreement***").

**WHEREAS**, the Company and certain of the Investors (the "***Purchasing Investors***") are parties to that certain Series B Preferred Share Purchase Agreement dated of even date herewith (the "***Purchase Agreement***") by and among the Company and such Investors, pursuant to which such Purchasing Investors have agreed to purchase shares of Series B Preferred Shares.

**WHEREAS**, Section 6.6 of the Prior Agreement provides, in part, that the Prior Agreement may be amended, modified or terminated and the observance of any term thereof may be waived only with the written consent of the Company and the holders of at least sixty percent (60%) of the Common Shares issued or issuable upon conversion of the Preferred Shares excluding any Mandatory Conversion Shares (as defined therein) (the foregoing holders, the "***Requisite Majority***").

**WHEREAS**, in order to induce the Company to enter into the Purchase Agreement and to induce the Purchasing Investors to invest funds in the Company pursuant to the Purchase Agreement, the undersigned Existing Investors sufficient to constitute the Requisite Majority and the Company desire to enter into this Agreement with the Purchasing Investors to amend and restate the Prior Agreement in its entirety with this Agreement, which shall govern the rights of the Investors to cause the Company to register shares of Common Shares issuable to the Investors, receive certain information from the Company, and provide for certain other matters as set forth in this Agreement.

**NOW, THEREFORE**, the parties hereby agree as follow:

**ARTICLE I. Definitions**. For purposes of this Agreement:

1.01 "***Affiliate***" means, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including without limitation any general partner, manager, managing member, officer, director or trustee of such Person, or any venture capital fund, private investment vehicle or registered investment company now or hereafter existing that is controlled by one or more general partners, managing members or investment advisers of, or shares the same management company, ultimate beneficial owner or investment adviser with, such Person.

1.02 "***Board of Managers***" means the board of managers of the Company.

1.03 "***Common Shares***" means the Company's Common Shares, as defined in the Operating Agreement.

1.04 "***Competitor***" means a Person engaged, directly or indirectly (including through any partnership, limited liability company, corporation, joint venture or similar arrangement (whether now existing or formed hereafter)), in the discovery or development of therapies to treat any indication for which the Company or any of its subsidiaries is then engaged in research and/or development for, but shall not include any financial investment firm or collective investment vehicle that, together with its Affiliates, holds less than 20% of the outstanding equity of any Competitor and does not, nor do any of its Affiliates, have a right to designate any members of the board of directors or board of managers of any Competitor; *provided that* for purposes of this Agreement, none of Canaan XI L.P., Atlas Venture Fund XI, L.P. ("***Atlas***"), AI Day1 LLC or RA Capital Healthcare Fund, L.P., RA Capital NEXUS II, L.P. or their respective Affiliates (collectively, "***RA Capital***"), Viking Global Opportunities Illiquid Investments Sub- Master LP or its Affiliates (collectively, "***Viking***"), Janus Henderson Global Life Sciences Fund and Janus Henderson Capital Funds Plc-Janus Henderson Global Life Sciences Fund, Perceptive Life Sciences Master Fund, Ltd, Franklin Strategic Series – Franklin Biotechnology Discovery Fund, Boxer Capital, LLC, or MVA Investors, LLC shall be deemed to be a Competitor.

1.05 "***Damages***" means any loss, damage, claim or liability (joint or several) to which a party hereto may become subject under the Securities Act, the Exchange Act, or other federal or state law or otherwise, insofar as such loss, damage, claim or liability (or any action in respect thereof) arises out of or is based upon: (i) any untrue statement or alleged untrue statement of a material fact contained in any registration statement of the Company, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto; (ii) an omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading; or (iii) any violation or alleged violation by the indemnifying party (or any of its agents or Affiliates) of the Securities Act, the Exchange Act, any state securities law, or any rule or regulation promulgated under the Securities Act, the Exchange Act, or any state securities law.

1.06 "***Derivative Securities***" means any securities or rights convertible into, or exercisable or exchangeable for (in each case, directly or indirectly), Common Shares, including options and warrants.

1.07 "***Exchange Act***" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

1.08 "***Excluded Registration***" means (i) a registration relating to the sale or grant of securities to employees of the Company or a subsidiary pursuant to an incentive share award, share purchase, incentive share or similar plan; (ii) a registration relating to an SEC Rule 145 transaction; (iii) a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities; or (iv) a registration in which the only Common Shares being registered is Common Shares issuable upon conversion of debt securities that are also being registered.

1.09 "***Form S-1***" means such form under the Securities Act as in effect on the date hereof or any successor registration form under the Securities Act subsequently adopted by the SEC.

1.10 "***Form S-3***" means such form under the Securities Act as in effect on the date hereof or any registration form under the Securities Act subsequently adopted by the SEC that permits forward incorporation of substantial information by reference to other documents filed by the Company with the SEC.

1.11 "***GAAP***" means generally accepted accounting principles in the United States as in effect from time to time.

1.12 "***Holder***" means any holder of Registrable Securities who is a party to this Agreement.

1.13 "***Immediate Family Member***" means a child, stepchild, grandchild, parent, stepparent, grandparent, spouse, domestic partner, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including, adoptive relationships, of a natural person referred to herein.

1.14 "***Initiating Holders***" means, collectively, Holders who properly initiate a registration request under this Agreement.

1.15 "***Investor***" means each Person listed on **Schedule A** hereto for such time as such Person.

1.16 "***IPO***" means the Company's first underwritten public offering of its equity securities under the Securities Act.

1.17 "***New Securities***" means, collectively, equity securities of the Company, whether or not currently authorized, as well as rights, options, or warrants to purchase such equity securities, or securities of any type whatsoever that are, or may become, convertible or exchangeable into or exercisable for such equity securities.

1.18 "***Operating Agreement***" means the Company's Amended and Restated Operating Agreement, of even date herewith, as it may be amended and/or restated from time to time.

1.19 "***Person***" means any individual, corporation, partnership, trust, limited liability company, association or other entity.

1.20 "***Preferred Shares***" means the Company's Series A Convertible Preferred Shares and Series B Convertible Preferred Shares (each, as defined in the Operating Agreement).

1.21 "***Registrable Securities***" means (i) the Common Shares issuable or issued upon conversion of the Preferred Shares; (ii) the Common Shares held by the Investors on the date hereof; and

(iii) any Common Shares issued as (or issuable upon the conversion or exercise of any warrant, right, or other security that is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, the shares referenced in clauses (i) and (ii) above; excluding in all cases, however, any Registrable Securities sold by a Person in a transaction in which the applicable rights under this Agreement are not assigned pursuant to Section 6.01, and excluding for purposes of Section 2 any shares for which registration rights have terminated pursuant to Section 2.11 of this Agreement.

1.22 "***Registrable Securities then outstanding***" means the number of shares determined by adding the number of outstanding Common Shares that are Registrable Securities and the number of Common Shares issuable (directly or indirectly) pursuant to then exercisable and/or convertible securities that are Registrable Securities.

1.23 "***Required Holders***" means, collectively, holders of at least sixty percent (60%) of the Common Shares issued or issuable upon conversion of the Preferred Shares which shall include at least one holder of solely Series B Convertible Preferred Shares (which, for clarification, shall exclude any holder of any Series A Convertible Preferred Shares).

1.24 "***SEC***" means the U.S. Securities and Exchange Commission.

1.25 "***SEC Rule 144***" means Rule 144 promulgated by the SEC under the Securities Act.

1.26 "***SEC Rule 145***" means Rule 145 promulgated by the SEC under the Securities Act.

1.27 "***Securities Act***" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

1.28 "***Selling Expenses***" means all underwriting discounts, selling commissions, and share transfer taxes applicable to the sale of Registrable Securities, and fees and disbursements of counsel for any Holder, except for the fees and disbursements of the Selling Holder Counsel borne and paid by the Company as provided in Section 2.6.

**ARTICLE II. Registration Rights**. The Company covenants and agrees as follows:

2.01 **Demand Registration**.

(a) **Form S-1 Demand**. If, at any time after one hundred eighty (180) days after the consummation of the Company's IPO, the Company receives a request from the Required Holders that the Company file a Form S-1 registration statement with respect to an underwritten offering of at least 40% of the Registrable Securities then outstanding covering the registration of Registrable Securities with an anticipated aggregate offering price, net of Selling Expenses, of at least $10,000,000, then the Company shall (x) within ten (10) days after the date such request is given, give notice thereof (the "***Demand Notice***") to all Holders other than the Initiating Holders; and (y) as soon as practicable, and in any event within sixty (60) days after the date such request is given by the Initiating Holders, file a Form S-1 registration statement under the Securities Act covering all Registrable Securities that the Initiating Holders requested to be registered and any additional Registrable Securities requested to be included in such registration by any other Holders, as specified by notice given by each such Holder to the Company within twenty (20) days of the date the Demand Notice is given, and in each case, subject to the limitations of Sections 2.01(c) and 2.3.

(b) **Form S-3 Demand**. If, at any time after one hundred eighty (180) days after the consummation of the Company's IPO, when it is eligible to use a Form S-3 registration statement, the Company receives a request from the Required Holders that the Company file a Form S-3 registration statement with respect to outstanding Registrable Securities of such Holders having an anticipated aggregate offering price, net of Selling Expenses, of at least $2,500,000, then the Company shall (i) within ten (10) days after the date such request is given, give a Demand Notice to all Holders other than the Initiating Holders; and (ii) as soon as practicable, and in any event within 45 days after the date such request is given by the Initiating Holders, file a Form S-3 registration statement under the Securities Act covering all Registrable Securities requested to be included in such registration by any other Holders, as specified by notice given by each such Holder to the Company within twenty (20) days of the date the Demand Notice is given, and in each case, subject to the limitations of Sections 2.01(c) and 2.03.

(c) Notwithstanding the foregoing obligations, if the Company furnishes to Holders requesting a registration pursuant to this Section 2.01 a certificate signed by the Company's chief executive officer stating that in the good faith judgment of the Board of Managers it would be materially detrimental to the Company and its members for such registration statement to either become effective or remain effective for as long as such registration statement otherwise would be required to remain effective, because it would be materially detrimental to the Company and its members for such registration statement to be filed and it is therefore necessary to defer the filing of such registration statement, then the Company

shall have the right to defer taking action with respect to such filing, and any time periods with respect to filing or effectiveness thereof shall be tolled correspondingly, for a period of not more than one hundred twenty (120) days after the request of the Initiating Holders is given; *provided*, *however*, that the Company may not invoke this right more than once in any 12 month period.

(d) The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to Section 2.01(a) (i) during the period that is sixty (60) days before the Company's good faith estimate of the date of filing of, and ending on a date that is one hundred eighty (180) days after the effective date of, a Company-initiated registration, *provided* that the Company is actively employing in good faith commercially reasonable efforts to cause such registration statement to become effective; (ii) after the Company has effected two registrations pursuant to Section 2.01(a); or (iii) if the Initiating Holders propose to dispose of shares of Registrable Securities that may be immediately registered on Form S-3 pursuant to a request made pursuant to Section 2.01(b). The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to Section 2.01(b) (i) during the period that is thirty (30) days before the Company's good faith estimate of the date of filing of, and ending on a date that is ninety (90) days after the effective date of, a Company-initiated registration, *provided* that the Company is actively employing in good faith commercially reasonable efforts to cause such registration statement to become effective; or (ii) if the Company has effected two registrations pursuant to Section 2.1(b) within the twelve (12) month period immediately preceding the date of such request. A registration shall not be counted as "effected" for purposes of this Section 2.01(d) until such time as the applicable registration statement has been declared effective by the SEC, unless the Initiating Holders withdraw their request for such registration, elect not to pay the registration expenses therefor, and forfeit their right to one demand registration statement pursuant to Section 2.06, in which case such withdrawn registration statement shall be counted as "effected" for purposes of this Section 2.01(d); *provided*, that if such withdrawal is during a period the Company has deferred taking action pursuant to Section 2.01(c), then the Initiating Holders may withdraw their request for registration and such registration will not be counted as "effected" for purposes of this Section 2.01(d).

2.02 **Company Registration**. If the Company proposes to register (including, for this purpose, a registration effected by the Company for members other than the Holders) any of its securities under the Securities Act in connection with the public offering of such securities solely for cash (other than in an Excluded Registration), the Company shall, at such time, promptly give each Holder notice of such registration. Upon the request of each Holder given within twenty (20) days after such notice is given by the Company, the Company shall, subject to the provisions of Section 2.03, cause to be registered all of the Registrable Securities that each such Holder has requested to be included in such registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 2.02 before the effective date of such registration, whether or not any Holder has elected to include Registrable Securities in such registration. The expenses (other than Selling Expenses) of such withdrawn registration shall be borne by the Company in accordance with Section 2.06.

2.03 **Underwriting Requirements**.

(a) If, pursuant to Section 2.01, the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to Section 2.01, and the Company shall include such information in the Demand Notice. The underwriter(s) will be selected by the Company and shall be reasonably acceptable to a majority in interest of the Initiating Holders. In such event, the right of any Holder to include such Holder's Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Section 2.04(e)) enter into an underwriting

agreement in customary form with the underwriter(s) selected for such underwriting. Notwithstanding any other provision of this Section 2.03, if the managing underwriter(s) advise(s) the Initiating Holders in writing that marketing factors require a limitation on the number of shares to be underwritten, then the Initiating Holders shall so advise all Holders of Registrable Securities that otherwise would be underwritten pursuant hereto, and the number of Registrable Securities that may be included in the underwriting shall be allocated among such Holders of Registrable Securities, including the Initiating Holders, in proportion (as nearly as practicable) to the number of Registrable Securities owned by each Holder or in such other proportion as shall mutually be agreed to by all such selling Holders; *provided, however*, that the number of Registrable Securities held by the Holders to be included in such underwriting shall not be reduced unless all other securities are first entirely excluded from the underwriting. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of shares allocated to any Holder to the nearest one hundred (100) shares.

(b) In connection with any offering involving an underwriting of shares of the Company's capital shares pursuant to Section 2.02, the Company shall not be required to include any of the Holders' Registrable Securities in such underwriting unless the Holders accept the terms of the underwriting as agreed upon between the Company and its underwriters, and then only in such quantity as the underwriters in their sole discretion determine will not jeopardize the success of the offering by the Company. If the total number of securities, including Registrable Securities, requested by members to be included in such offering exceeds the number of securities to be sold (other than by the Company) that the underwriters in their reasonable discretion determine is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters and the Company in their sole discretion determine will not jeopardize the success of the offering. If the underwriters determine that less than all of the Registrable Securities requested to be registered can be included in such offering, then the Registrable Securities that are included in such offering shall be allocated among the selling Holders in proportion (as nearly as practicable to) the number of Registrable Securities owned by each selling Holder or in such other proportions as shall mutually be agreed to by all such selling Holders. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of shares allocated to any Holder to the nearest one hundred (100) shares. Notwithstanding the foregoing, in no event shall (i) the number of Registrable Securities included in the offering be reduced unless all other securities (other than securities to be sold by the Company) are first entirely excluded from the offering, or (ii) the number of Registrable Securities included in the offering be reduced below 20% of the total number of securities included in such offering, unless such offering is the IPO, in which case the selling Holders may be excluded further if the underwriters make the determination described above and no other member's securities are included in such offering For purposes of the provision in this Section 2.03(b) concerning apportionment, for any selling Holder that is a partnership, limited liability company, or corporation, the partners, members, retired partners, retired members, members, and Affiliates of such Holder, or the estates and Immediate Family Members of any such partners, retired partners, members, and retired members and any trusts for the benefit of any of the foregoing Persons, shall be deemed to be a single "selling Holder," and any pro rata reduction with respect to such "selling Holder" shall be based upon the aggregate number of Registrable Securities owned by all Persons included in such "selling Holder," as defined in this sentence.

(c) For purposes of Section 2.01, a registration shall not be counted as "effected" if, as a result of an exercise of the underwriter's cutback provisions in Section 2.03(a), fewer than 50% of the total number of Registrable Securities that Holders have requested to be included in such registration statement are actually included.

2.04 **Obligations of the Company**. Whenever required under this Section 2 to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such registration statement to become effective and, upon the request of the Holders of a majority of the Registrable Securities registered thereunder, keep such registration statement effective for a period of up to one hundred twenty (120) days or, if earlier, until the distribution contemplated in the registration statement has been completed; *provided*, *however*, that such one hundred twenty (120) day period shall be extended for a period of time equal to the period the Holder refrains, at the request of an underwriter of Common Shares (or other securities) of the Company, from selling any securities included in such registration;

(b) prepare and file with the SEC such amendments and supplements to such registration statement, and the prospectus used in connection with such registration statement, as may be necessary to comply with the Securities Act in order to enable the disposition of all securities covered by such registration statement;

(c) furnish to the selling Holders such numbers of copies of a prospectus, including a preliminary prospectus, as required by the Securities Act, and such other documents as the Holders may reasonably request in order to facilitate their disposition of their Registrable Securities;

(d) use its commercially reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or blue-sky laws of such jurisdictions as shall be reasonably requested by the selling Holders; *provided* that the Company shall not be required to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act;

(e) in the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the underwriter(s) of such offering;

(f) use its commercially reasonable efforts to cause all such Registrable Securities covered by such registration statement to be listed on a national securities exchange or trading system and each securities exchange and trading system (if any) on which similar securities issued by the Company are then listed;

(g) provide a transfer agent and registrar for all Registrable Securities registered pursuant to this Agreement and provide a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(h) promptly make available for inspection by the selling Holders, any managing underwriter(s) participating in any disposition pursuant to such registration statement, and any attorney or accountant or other agent retained by any such underwriter or selected by the selling Holders, all financial and other records, pertinent company documents, and properties of the Company, and cause the Company's officers, managers, employees, and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant, or agent, in each case, as necessary or advisable to verify the accuracy of the information in such registration statement and to conduct appropriate due diligence in connection therewith;

(i) notify each selling Holder, promptly after the Company receives notice thereof, of the time when such registration statement has been declared effective or a supplement to any prospectus forming a part of such registration statement has been filed; and

(j) after such registration statement becomes effective, notify each selling Holder of any request by the SEC that the Company amend or supplement such registration statement or prospectus. In addition, the Company shall ensure that, at all times after any registration statement covering a public offering of securities of the Company under the Securities Act shall have become effective, its insider trading policy shall provide that the Company's managers may implement a trading program under Rule 10b5-1 of the Exchange Act.

2.05 **Furnish Information**. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 2 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as is reasonably required to effect the registration of such Holder's Registrable Securities.

2.06 **Expenses of Registration**. All expenses (other than Selling Expenses) incurred in connection with registrations, filings, or qualifications pursuant to Section 2, including all registration, filing, and qualification fees; printers' and accounting fees; fees and disbursements of counsel for the Company; and the reasonable fees and disbursements of one counsel for the selling Holders ("***Selling Holder Counsel***"), shall be borne and paid by the Company; *provided, however*, that the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Section 2.01 if the registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered (in which case all selling Holders shall bear such expenses pro rata based upon the number of Registrable Securities that were to be included in the withdrawn registration), unless the Holders of a majority of the Registrable Securities agree to forfeit their right to one registration pursuant to Sections 2.01(a) or 2.01(b), as the case may be; *provided further* that if, at the time of such withdrawal, the Holders have learned of a material adverse change in the condition, business, or prospects of the Company from that known to the Holders at the time of their request and have withdrawn the request with reasonable promptness after learning of such information, then the Holders shall not be required to pay any of such expenses and shall not forfeit their right to one registration pursuant to Sections 2.01(a) or 2.01(b). All Selling Expenses relating to Registrable Securities registered pursuant to this Section 2 shall be borne and paid by the Holders pro rata on the basis of the number of Registrable Securities registered on their behalf.

2.07 **Delay of Registration**. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any registration pursuant to this Agreement as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 2.

2.08 **Indemnification**. If any Registrable Securities are included in a registration statement under this Section 2:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each selling Holder, and the partners, members, officers, directors, managers, members and stockholders of each such Holder; legal counsel and accountants for each such Holder; any underwriter (as defined in the Securities Act) for each such Holder; and each Person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any Damages, and the Company will pay to each such Holder, underwriter, controlling Person, or other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; *provided, however*, that the indemnity agreement contained in this Section 2.08(a) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld, nor shall the Company be liable for any Damages to the extent that they arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of any such Holder, underwriter, controlling Person, or other aforementioned Person expressly for use in connection with such registration.

(b) To the extent permitted by law, each selling Holder, severally and not jointly, will indemnify and hold harmless the Company, and each of its managers, each of its officers who has signed the registration statement, each Person (if any), who controls the Company within the meaning of the Securities Act, legal counsel and accountants for the Company, any underwriter (as defined in the Securities Act), any other Holder selling securities in such registration statement, and any controlling Person of any such underwriter or other Holder, against any Damages, in each case only to the extent that such Damages arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of such selling Holder expressly for use in connection with such registration; and each such selling Holder will pay to the Company and each other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; *provided, however*, that the indemnity agreement contained in this Section 2.08(b) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the written consent of such Holder, which consent shall not be unreasonably withheld; and *provided further* that in no event shall the aggregate amounts payable by any Holder by way of indemnity or contribution under Section 2.8(b) and 2.8(d) exceed the proceeds from the offering received by such Holder (net of any Selling Expenses paid by such Holder), except in the case of fraud or willful misconduct by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 2.08 of notice of the commencement of any action (including any governmental action) for which a party may be entitled to indemnification hereunder, such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 2.08, give the indemnifying party notice of the commencement thereof. The indemnifying party shall have the right to participate in such action and, to the extent the indemnifying party so desires, participate jointly with any other indemnifying party to which notice has been given, and to assume the defense thereof with counsel mutually satisfactory to the parties; *provided, however*, that an indemnified party (together with all other indemnified parties that may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such action. The indemnifying party shall not be entitled to assume or maintain control of the defense of any claim and shall pay the fees and expenses of one counsel retained by the indemnified party if (i) the claim relates to or arises in connection with any criminal proceeding, action, indictment or allegation or (ii) the claim seeks an injunction or equitable relief against the indemnified party or any of its affiliates. No indemnifying party in the defense of any such action shall, except with the consent of each indemnified party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party or a release from all liability in respect to such action. The failure to give notice to the indemnifying party within a reasonable time of the commencement of any such action shall relieve such indemnifying party of any liability to the indemnified party under this Section 2.08, to the extent that such failure materially prejudices the indemnifying party's ability to defend such action. The failure to give notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 2.8.

(d) To provide for just and equitable contribution to joint liability under the Securities Act in any case in which either: (i) any party otherwise entitled to indemnification hereunder makes a claim for indemnification pursuant to this Section 2.08 but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case, notwithstanding the fact that this Section 2.08 provides for indemnification in such case, or (ii) contribution

under the Securities Act may be required on the part of any party hereto for which indemnification is provided under this Section 2.08, then, and in each such case, such parties will contribute to the aggregate losses, claims, damages, liabilities, or expenses to which they may be subject (after contribution from others) in such proportion as is appropriate to reflect the relative fault of each of the indemnifying party and the indemnified party in connection with the statements, omissions, or other actions that resulted in such loss, claim, damage, liability, or expense, as well as to reflect any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or allegedly untrue statement of a material fact, or the omission or alleged omission of a material fact, relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission; *provided, however*, that, in any such case (x) no Holder will be required to contribute any amount in excess of the public offering price of all such Registrable Securities offered and sold by such Holder pursuant to such registration statement, and (y) no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation; and *provided further* that in no event shall a Holder's liability pursuant to this Section 2.08(d), when combined with the amounts paid or payable by such Holder pursuant to Section 2.08(b), exceed the proceeds from the offering received by such Holder (net of any Selling Expenses paid by such Holder), except in the case of willful misconduct or fraud by such Holder.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

(f) Unless otherwise superseded by an underwriting agreement entered into in connection with the underwritten public offering, the obligations of the Company and Holders under this Section 2.08 shall survive the completion of any offering of Registrable Securities in a registration under this Section 2, and otherwise shall survive the termination of this Agreement.

2.09 **Reports Under Exchange Act**. With a view to making available to the Holders the benefits of SEC Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company shall:

(a) make and keep available adequate current public information, as those terms are understood and defined in SEC Rule 144, at all times after the effective date of the registration statement filed by the Company for the IPO;

(b) use commercially reasonable efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act (at any time after the Company has become subject to such reporting requirements); and

(c) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) to the extent accurate, a written statement by the Company that it has complied with the reporting requirements of SEC Rule 144 (at any time after ninety (90) days after the effective date of the registration statement filed by the Company for the IPO), the Securities Act, and the Exchange Act (at any time after the Company has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after the Company so qualifies); and (ii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC that permits the selling of any such securities without registration (at any time after the Company has become subject to the reporting requirements under the Exchange Act) or pursuant to Form S-3 (at any time after the Company so qualifies to use such form).

2.10 **Limitations on Subsequent Registration Rights**. From and after the date of this Agreement, the Company shall not, without the prior written consent of the Required Holders, enter into any agreement with any holder or prospective holder of any securities of the Company that would (i) provide to such holder or prospective holder the right to include securities in any registration on other than a subordinate basis after all Holders have had the opportunity to include in the registration and offering all shares of Registrable Securities that they wish to so include or (ii) allow such holder or prospective holder to include such securities in any registration unless, under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that the inclusion of such securities will not reduce the number of the Registrable Securities of the Holders that are included.

2.11 **"Market Stand-off" Agreement**. Each Holder hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the final prospectus relating to the registration by the Company of its Common Shares or any other equity securities under the Securities Act on a registration statement on Form S-1 and ending on the date specified by the Company and the managing underwriter (such period not to exceed one hundred eighty (180) days in the case of the IPO), (i) lend; offer; pledge; sell; contract to sell; sell any option or contract to purchase; purchase any option or contract to sell; grant any option, right, or warrant to purchase; or otherwise transfer or dispose of, directly or indirectly, any Common Shares or any securities convertible into or exercisable or exchangeable (directly or indirectly) for Common Shares held immediately before the effective date of the registration statement for such offering or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of such securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Shares or other securities, in cash, or otherwise. The foregoing provisions of this Section 2.11 shall apply only to the IPO, and shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, to the establishment of a trading plan pursuant to Rule 10b5-1, provided that such plan does not permit transfers during the restricted period, or to the transfer of any shares to an Affiliate of the Holder or to a trust for the direct or indirect benefit of the Holder or the Immediate Family Member of the Holder, provided that the Affiliate or trustee of the trust (as applicable) agrees to be bound in writing by the restrictions set forth herein, and shall be applicable to the Holders only if all officers, directors and managers are subject to the same restrictions and the Company uses commercially reasonable efforts to obtain a similar agreement from all members individually owning more than one percent (1%) of the Company's then- outstanding Common Shares (after giving effect to conversion into Common Shares of all outstanding Preferred Shares). The underwriters in connection with such registration are intended third-party beneficiaries of this Section 2.11 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. Each Holder further agrees to execute such agreements as may be reasonably requested by the underwriters in connection with such registration that are consistent with this Section 2.11 or that are necessary to give further effect thereto. Any discretionary waiver or termination of the restrictions of any or all of such agreements by the Company or the underwriters shall apply pro rata to all Holders subject to such agreements, based on the number of shares subject to such agreements, unless otherwise approved by the Required Holders.

2.12 **Termination of Registration Rights**. The right of any Holder to request registration or inclusion of Registrable Securities in any registration pursuant to Sections 2.01 or 2.02 shall terminate upon the earliest to occur of:

(a) the closing of a Deemed Liquidation Event (as defined in the Operating Agreement);

(b) such time after consummation of the IPO as SEC Rule 144 or another similar exemption under the Securities Act is available for the sale of all of such Holder's shares without limitation during a three-month period without registration; and

(c) the fifth anniversary of the IPO.

**ARTICLE III. Information Rights**.

3.01 **Delivery of Financial Statements**. The Company shall deliver to each Investor, *provided that* the Board of Managers has not reasonably determined that such Investor is a Competitor of the Company:

(a) as soon as practicable, but in any event within ninety (90) days after the end of each fiscal year of the Company commencing with the calendar year ending December 31, 2020 (i) a balance sheet as of the end of such year, (ii) statements of income and of cash flows for such year, and a comparison between (x) the actual amounts as of and for such fiscal year and (y) the comparable amounts for the prior year and as included in the Budget (as defined in Subsection 3.01(e)) for such year, with an explanation of any material differences between such amounts and a schedule as to the sources and applications of funds for such year, and (iii) a statement of members' equity as of the end of such year, all such financial statements audited and certified by independent public accountants of regionally recognized standing selected by the Company;

(b) as soon as practicable, but in any event within forty-five (45) days after the end of each quarter of each fiscal year of the Company, unaudited statements of income and cash flows for such fiscal quarter, and an unaudited balance sheet and a statement of shareholders' equity as of the end of such fiscal quarter, all prepared in accordance with GAAP (except that such financial statements may (i) be subject to normal year-end audit adjustments; and (ii) not contain all notes thereto that may be required in accordance with GAAP);

(c) as soon as practicable, but in any event within forty-five (45) days after the end of each of the first three (3) quarters of each fiscal year of the Company, a statement showing the number of shares of each class and series of interests and securities convertible into or exercisable for shares of interests outstanding at the end of the period, the Common Shares issuable upon conversion or exercise of any outstanding securities convertible or exercisable for Common Shares and the exchange ratio or exercise price applicable thereto, and the number of Incentive Shares issued and Incentive Shares not yet issued but reserved for issuance, if any, all in sufficient detail as to permit the Investors to calculate their respective percentage equity ownership in the Company;

(d) as soon as practicable, but in any event within thirty (30) days of the end of each month, an unaudited income statement and statement of cash flows for such month, and an unaudited balance sheet and statement of members' equity as of the end of such month, all prepared in accordance with GAAP (except that such financial statements may (i) be subject to normal year-end audit adjustments and (ii) not contain all notes thereto that may be required in accordance with GAAP); and

(e) as soon as practicable, but in any event thirty (30) days before the beginning of each fiscal year, a budget and business plan for the next fiscal year (collectively, the "***Budget***"), prepared on a monthly basis, including balance sheets, income statements, and statements of cash flow for such months and, promptly after prepared, any other budgets or revised budgets prepared by the Company.

If, for any period, the Company has any subsidiary whose accounts are consolidated with those of the Company, then in respect of such period the financial statements delivered pursuant to the foregoing sections shall be the consolidated and consolidating financial statements of the Company and all such consolidated subsidiaries.

Notwithstanding anything else in this Section 3.01 to the contrary, the Company may cease providing the information set forth in this Section 3.01 during the period starting with the date sixty (60) days before the Company's good-faith estimate of the date of filing of a registration statement if it reasonably concludes it must do so to comply with the SEC rules applicable to such registration statement and related offering; *provided* that the Company's covenants under this Section 3.01 shall be reinstated at such time as the Company is no longer actively employing its commercially reasonable efforts to cause such registration statement to become effective.

3.02 **Inspection**. The Company shall permit each Investor, *provided that* the Board of Managers has not reasonably determined that such Investor is a Competitor of the Company, at such Investor's expense, to visit and inspect the Company's properties; examine its books of account and records; and discuss the Company's affairs, finances, and accounts with its officers, during normal business hours of the Company as may be reasonably requested by the Investor; *provided, however*, that the Company shall not be obligated pursuant to this Section 3.02 to provide access to any information that it reasonably and in good faith considers to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in form acceptable to the Company) or the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel.

3.03 **Observer Rights.** The Company shall invite a representative of Atlas, for so long as such Investor owns not less than 500,000 Preferred Shares (or an equivalent amount of Common Shares issued upon conversion thereof), which number is subject to appropriate adjustment for any share splits, share dividends, combinations, recapitalizations and the like, to attend all meetings of the Board of Managers in a nonvoting observer capacity and, in this respect, shall give such representative copies of all notices, minutes, consents, and other materials that it provides to its managers at the same time and in the same manner as provided to such managers; provided, however, that such representative shall agree to hold in confidence and trust and to act in a fiduciary manner with respect to all information so provided; and provided further, that the Company reserves the right to withhold any information and to exclude such representative from any meeting or portion thereof if access to such information or attendance at such meeting could adversely affect the attorney-client privilege between the Company and its counsel or result in disclosure of trade secrets or a conflict of interest, or if such Investor or its representative is a competitor of the Company.

3.04 **Termination of Information and Observer Rights**. The covenants set forth in Section 3.01, Section 3.02 and Section 3.03 shall terminate and be of no further force or effect (i) immediately before the consummation of the IPO, (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act, or (iii) upon the closing of a Deemed Liquidation Event, whichever event occurs first.

3.05 **Confidentiality**. Each Investor severally agrees that such Investor will keep confidential and will not disclose, divulge, or use for any purpose (other than to monitor its investment in the Company or to enforce its rights under this Agreement or any other agreement between the Company and the Investors) any confidential information obtained from the Company pursuant to the terms of this Agreement (including notice of the Company's intention to file a registration statement), unless such confidential information (a) is known or becomes known to the public in general (other than as a result of a breach of this Section 3.05 by such Investor), (b) is or has been independently developed or conceived by such Investor without use of the Company's confidential information, or (c) is or has been made known or disclosed to such Investor by a third party without a breach of any obligation of confidentiality such third

party may have to the Company; *provided*, *however*, that an Investor may disclose confidential information (i) to its attorneys, accountants, consultants, and other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company or to enforce its rights under this Agreement or any other agreement between the Company and the Investors; (ii) to any prospective purchaser of any Registrable Securities from such Investor, if such prospective purchaser is subject to a confidentiality agreement with such Investor or is otherwise bound to keep such information confidential by obligations at least as restrictive as the provisions of this Section 3.05 and *provided that* such prospective purchaser is not a Competitor of the Company; (iii) to any regulator, existing or prospective Affiliate, partner, member, stockholder, or wholly owned subsidiary of such Investor in the ordinary course of business, *provided* that, to the extent permitted by applicable law, such Investor informs such Person that such information is confidential and directs such Person to maintain the confidentiality of such information; or (iv) as may otherwise be required by law, regulation, rule, court order or subpoena, *provided*, to the extent permitted by applicable law, that such Investor promptly notifies the Company of such disclosure and takes reasonable steps to minimize the extent of any such required disclosure.

**ARTICLE IV. Rights to Future Share Issuances**

4.01 **Right of First Offer**. Subject to the terms and conditions of this Section 4.1 and applicable securities laws, if the Company proposes to offer, issue or sell any New Securities, the Company shall first offer such New Securities to each Investor. An Investor shall be entitled to apportion the right of first offer hereby granted to it in such proportions as it deems appropriate, among itself and its Affiliates; *provided that* each such Affiliate agrees to become a party to the Operating Agreement.

(a) The Company shall give written notice (the "***Offer Notice***") to each Investor, stating (i) its bona fide intention to offer such New Securities, (ii) the number of such New Securities to be offered, and (iii) the price and terms, if any, upon which it proposes to offer such New Securities.

(b) By notification to the Company within twenty (20) days after the Offer Notice is given, each Investor may elect to purchase or otherwise acquire, at the price and on the terms specified in the Offer Notice, up to that portion of such New Securities which equals the proportion that the total number of Common Shares then held by such Investor (including all Common Shares then issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of the Preferred Shares and any other Derivative Securities then held by such Investor) bears to the total number of Common Shares and Incentive Shares of the Company then outstanding (assuming full conversion and/or exercise, as applicable, of all Preferred Shares and any other Derivative Securities then outstanding) (such proportion, the "***Relative Percentage***"). At the expiration of such twenty (20) day period, the Company shall promptly notify in writing each Investor that elects to purchase or acquire all the shares available to it (each, a "***Fully Exercising Investor***") of any other Investor's failure to do likewise. During the ten (10) day period commencing after the Company has given such notice, each Fully Exercising Investor may, by giving notice to the Company, elect to purchase or acquire, in addition to the number of shares specified above, up to that portion of the New Securities for which Investors were entitled to subscribe but that were not subscribed for by the Investors which is equal to the proportion that the total number of Common Shares issued and held, or issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of Preferred Shares and any other Derivative Securities then held, by such Fully Exercising Investor bears to the total number of Common Shares issued and held, or issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of the Preferred Shares and any other Derivative Securities then held, by all Fully Exercising Investors who wish to purchase such unsubscribed New Securities. The closing of any sale pursuant to this Section 4.1(b) shall occur within the later of one hundred and twenty (120) days of the date that the Offer Notice is given and the date of the initial sale of New Securities pursuant to Section 4.01(c).

(c) If all New Securities referred to in the Offer Notice are not elected to be purchased or acquired as provided in Section 4.01(b), the Company may, during the ninety (90) day period following the expiration of the periods provided in Section 4.01(b), offer and sell the remaining unsubscribed portion of such New Securities to any Person or Persons at a price not less than, and upon terms no more favorable to the offeree than, those specified in the Offer Notice. If the Company does not enter into an agreement for the sale of the New Securities within such period, or if such agreement is not consummated within thirty (30) days of the execution thereof, the right provided hereunder shall be deemed to be revived and such New Securities shall not be offered unless first reoffered to the Investors in accordance with this Section 4.01.

(d) The right of first offer in this Section 4.01 shall not be applicable to (i) Exempted Securities (as defined in the Operating Agreement); (ii) Common Shares issued in the IPO; (iii) and the issuance of Series B Preferred Shares pursuant to the Purchase Agreement.

4.02 **Termination**. The right of first offer set forth in Section 4.01 shall terminate and be of no further force or effect (i) immediately before the consummation of the IPO or (ii) upon the closing of a Deemed Liquidation Event, as such term is defined in the Operating Agreement, whichever event occurs first.

**ARTICLE V. Additional Covenants**.

5.01 **Insurance**. The Company shall continue to maintain, from financially sound and reputable insurers, Managers and Officers liability insurance in an amount (which shall be no less than $3,000,000) and on terms and conditions satisfactory to the Board of Managers, including at least two of the Preferred Managers (as defined in the Operating Agreement), and will use commercially reasonable efforts to cause such insurance policies to be maintained until such time as the Board of Managers, including at least two of the Preferred Managers, determine that such insurance should be discontinued. The policy will not be cancelable by the Company without prior approval by the Board of Managers, including at least two of the Preferred Managers.

5.02 **Employee Incentive Shares**. Unless otherwise approved by the Board of Managers, including at least two of the Preferred Managers, all future employees and consultants of the Company and its subsidiaries who purchase or receive awards of incentive shares after the date hereof shall be required to execute award agreements providing for (i) vesting of incentive shares over a four year period, with the first 25% of such incentive shares vesting following twelve (12) months of continued employment or service, and the remaining incentive shares vesting in equal monthly installments over the following thirty-six (36) months (which may, at the discretion of the Board of Managers, include double- trigger acceleration) or such other standard vesting schedule as has been approved by the Board of Managers, including at least two of the Preferred Managers, and (ii) a market stand-off provision substantially similar to that in Section 2.15 of the Operating Agreement. Without the prior approval by the Board of Managers, the Company shall not amend, modify, terminate, waive or otherwise alter, in whole or in part, any award agreement with any existing employee or service provider if such amendment would cause it to be inconsistent with this Section 5.02.

5.03 **Successor Indemnification**. If the Company or any of its successors or assignees consolidates with or merges into any other Person and is not the continuing or surviving entity of such consolidation or merger, then to the extent necessary, proper provision shall be made so that the successors and assignees of the Company assume the obligations of the Company with respect to indemnification of members of the Board of Managers as in effect immediately before such transaction, whether such obligations are contained in the Operating Agreement, or elsewhere, as the case may be.

5.04 **Right to Conduct Activities**. The Company hereby agrees and acknowledges that certain of the Investors, including RA Capital, AI Day1 LLC, Viking, Franklin Strategic Series – Franklin Biotechnology Discovery Fund, Boxer Capital, LLC, and MVA Investors, LLC and their Affiliates, and representatives are professional investment organizations, and as such review the business plans and related proprietary information of many enterprises, some of which may compete directly or indirectly with the Company's business (as currently conducted or as currently propose to be conducted). The Company hereby agrees that, to the extent permitted under applicable law, such Investor (or their Affiliates) shall not be liable to the Company for any claim arising out of, or based upon, (i) the investment by such Investors (or their Affiliates) in any entity competitive with the Company, or (ii) actions taken by any partner, manager, officer, employee or other representative of such Investor (or their Affiliates) to assist any such competitive company, whether or not such action was taken as a member of the board of directors of such competitive company or otherwise, and whether or not such action has a detrimental effect on the Company; provided, however, that the foregoing shall not relieve (x) any of the Investors from liability associated with the unauthorized disclosure of the Company's confidential information obtained pursuant to this Agreement, or (y) any manager or officer of the Company from any liability associated with his or her fiduciary duties to the Company.

5.05 **Harassment Policy**. The Company shall, and shall cause any of its subsidiaries with employees to, within sixty (60) days following the Initial Closing (as defined in the Purchase Agreement), adopt and thereafter maintain in effect (i) a Code of Conduct governing appropriate workplace behavior and (ii) an Anti-Harassment and Discrimination Policy prohibiting discrimination and harassment at the Company. Such policies shall be reviewed and approved by the Board of Managers.

5.06 **Publicity.** The Company shall not use the name of any Investor or any of their respective Affiliates in any trade publication, marketing materials or otherwise to the general public, in each case without the prior written consent of such Investor, which consent may be withheld by such Investor in its sole discretion; provided that (a) the parties anticipate that there will be a mutually-agreed press release announcing the closing of the transaction contemplated in the Purchase Agreement and (b) following the public announcement contemplated in clause (a), the Company may confirm that such Investor is an investor in the Company (but not the amount or terms thereof) in a form of disclosure that has been previously approved by such Investor. Notwithstanding the foregoing, the Company may disclose the terms and/or amount of the investment by an Investor, without the prior approval of such Investor, (x) to a bona fide potential investor in or acquirer of the Company in connection with such potential investor's or acquirer's due diligence process or (y) as required by law, rule, regulation or listing standard to do so; in which case the Company (i) shall promptly notify such Investor of such requirement and will cooperate with such Investor, to the extent practicable to limit the information disclosed to only such information that the Company, as advised by counsel, is required by law to be disclosed and (ii) will, to the extent practicable and at the request and expense of such Investor, as applicable, seek to obtain a protective order over, or confidential treatment of, such information.

5.07 **FCPA**. The Company represents that it shall not (and shall not permit any of its subsidiaries or affiliates or any of its or their respective directors, officers, managers, employees, independent contractors, representatives or agents to) promise, authorize or make any payment to, or otherwise contribute any item of value to, directly or indirectly, to any third party, including any Non- U.S. Official (as such term is defined in the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "***FCPA***")), in each case, in violation of the FCPA, the U.K. Bribery Act, or any other applicable anti- bribery or anti-corruption law. The Company further represents that it shall (and shall cause each of its subsidiaries and affiliates to) cease all of its or their respective activities, as well as remediate any actions taken by the Company, its subsidiaries or affiliates, or any of their respective directors, officers, managers, employees, independent contractors, representatives or agents in violation of the FCPA, the U.K. Bribery Act, or any other applicable anti-bribery or anti-corruption law. The Company further represents that it shall

(and shall cause each of its subsidiaries and affiliates to) maintain systems of internal controls (including, but not limited to, accounting systems, purchasing systems and billing systems) to ensure compliance with the FCPA, the U.K. Bribery Act, or any other applicable anti-bribery or anti-corruption law. Upon request, the Company agrees to provide responsive information and/or certifications concerning its compliance with applicable anti-corruption laws. The Company shall promptly notify each Investor if the Company becomes aware of any enforcement action. The Company shall, and shall cause any direct or indirect subsidiary or entity controlled by it, whether now in existence or formed in the future, to comply with the FCPA. The Company shall use its best efforts to cause any direct or indirect subsidiary, whether now in existence or formed in the future, to comply in all material respects with all applicable laws.

5.08 **Termination of Covenants**. The covenants set forth in this Section 5, except for Section 5.03, shall terminate and be of no further force or effect (i) immediately before the consummation of the IPO, (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act, or (iii) upon a Deemed Liquidation Event, whichever event occurs first. In addition, the covenant set forth in Section 5.04 shall terminate and be of no further force or effect upon the conversion of the Company from a limited liability company to a C corporation, whether by way of a statutory conversion, merger or otherwise.

**ARTICLE VI. Miscellaneous**.

6.01 **Successors and Assigns**. The rights under this Agreement may be assigned (but only with all related obligations) by a Holder to a transferee of Registrable Securities that (i) is an Affiliate of a Holder; (ii) is a Holder's Immediate Family Member or trust for the benefit of an individual Holder or one or more of such Holder's Immediate Family Members; or (iii) after such transfer, holds at least 500,000 shares of Registrable Securities (subject to appropriate adjustment for share splits, share dividends, combinations, and other recapitalizations); provided, however, that (x) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee and the Registrable Securities with respect to which such rights are being transferred; and (y) such transferee agrees in a written instrument delivered to the Company to be bound by and subject to the terms and conditions of this Agreement, including the provisions of Section 2.11. For the purposes of determining the number of shares of Registrable Securities held by a transferee, the holdings of a transferee (1) that is an Affiliate or stockholder of a Holder; (2) who is a Holder's Immediate Family Member; or (3) that is a trust for the benefit of an individual Holder or such Holder's Immediate Family Member shall be aggregated together and with those of the transferring Holder; provided further that all transferees who would not qualify individually for assignment of rights shall, as a condition to the applicable transfer, establish a single attorney-in-fact for the purpose of exercising any rights, receiving notices, or taking any action under this Agreement. The terms and conditions of this Agreement inure to the benefit of and are binding upon the respective successors and permitted assignees of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assignees any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided herein.

6.02 **Governing Law**. This Agreement shall be governed by the internal law of the State of Delaware, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Delaware.

6.03 **Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, the Uniform Electronic Transactions Act or other applicable law, *e.g.*, www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

6.04 **Titles and Subtitles.** The titles and subtitles used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

6.05 **Notices**.

(a) All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or (i) personal delivery to the party to be notified; (ii) when sent, if sent by electronic mail during the recipient's normal business hours, and if not sent during normal business hours, then on the recipient's next business day; (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one business day after the business day of deposit with a nationally recognized overnight courier, freight prepaid, specifying next-day delivery, with written verification of receipt. All communications shall be sent to the respective parties at their addresses (and with such copies, which shall not constitute notice) as set forth on **Schedule A** hereto, or to the principal office of the Company and to the attention of the Chief Executive Officer, in the case of the Company, or to such email address, facsimile number, or address as subsequently modified by written notice given in accordance with this Section 6.05. If notice is given to the Company, it shall be sent to 395 Oyster Point Blvd, Suite 217, South San Francisco, CA 9408, *Attention*: Jeremy Bender, CEO; and a copy (which shall not constitute notice) shall also be sent to Fenwick & West LLP, 555 California Street, San Francisco, CA 94104, *Attention*: Effie Toshav.

(b) **Consent to Electronic Notice**. Each Investor consents to the delivery of any notice to such Investor pursuant to the Delaware Limited Liability Company Act (the "***Act***"), as amended or superseded from time to time, by electronic transmission pursuant to Section 18-113 of the Act (or any successor thereto) at the electronic mail address or the facsimile number set forth below such Investor's name on the Schedules hereto, as updated from time to time by notice to the Company, or as on the books of the Company. Each Investor agrees to promptly notify the Company of any change in such Investor's electronic mail address, and that failure to do so shall not affect the foregoing.

6.06 **Amendments and Waivers**.

(a) Any term of this Agreement may be amended, modified or terminated and the observance of any term of this Agreement may be waived (either generally or in a particular instance, and either retroactively or prospectively) only with the written consent of the Company and the Required Holders; *provided* that any provision hereof may be waived by any waiving party on such party's own behalf, without the consent of any other party; *provided further* that Section 5.07 hereof may only be amended, modified or terminated and the observance of Section 5.07 as it relates to any Investor, may be waived only with the prior consent of such Investor. Notwithstanding the foregoing, this Agreement may not be amended, modified or terminated and the observance of any term hereof may not be waived with respect to any Investor without the written consent of such Investor, unless such amendment, modification, termination, or waiver applies to all Investors in the same fashion. Notwithstanding the foregoing, **Schedule A** hereto may be amended by the Company from time to time to add transferees of any Registrable Securities in compliance with the terms of this Agreement without the consent of the other parties. The Company shall give prompt notice of any amendment, modification or termination hereof or waiver hereunder to any party hereto that did not consent in writing to such amendment, modification, termination, or waiver. Any amendment, modification, termination, or waiver effected in accordance with this Section 6.06 shall be binding on all parties hereto, regardless of whether any such party has consented thereto. No waivers of or exceptions to any term, condition, or provision of this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such term, condition, or provision

(b) In the event of any waiver of the provisions of Section 4 with respect to a particular issuance of New Securities that an Investor does not consent to in writing (each, a "***Non- Participating Investor***"), if any of the Investors participate in such waiver and also purchase New Securities in such particular offering (the "***Participating Investors***") then each Non-Participating Investor shall have the right to purchase its Relative Percentage of the New Securities, calculated in accordance with the provisions of Section 4, absent such waiver and on the same terms and conditions as the Participating Investor. The Company shall provide written notice to each Non-Participating Investor of such right, if applicable in connection with a particular issuance of New Securities, no later than the date of the initial closing of such issuance (the "***Participation Rights Notice***"). The Participation Rights Notice shall state the number of New Securities issued, or to be issued, to the Participating Investors (as well as any other investors) and shall include any term sheet and all definitive documents entered into in connection with such issuance of New Securities. Each Non-Participating Investor may exercise its rights pursuant to the provisions of this Section 6.06(b) by providing written notice to the Company of its intent to do so within twenty (20) days of receipt of the particular Participation Rights Notice, and will forfeit such rights with respect to such Participation Rights Notice in the event that it does not do so.

6.07 **Severability**. In case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and such invalid, illegal, or unenforceable provision shall be reformed and construed so that it will be valid, legal, and enforceable to the maximum extent permitted by law.

6.08 **Aggregation of Shares**. All shares of Registrable Securities held or acquired by Affiliates shall be aggregated together for the purpose of determining the availability of any rights under this Agreement and such Affiliates may apportion such rights as among themselves in any manner they deem appropriate.

6.09 **Entire Agreement**. This Agreement (including any Schedules and Exhibits hereto) constitutes the full and entire understanding and agreement among the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties is expressly canceled.

6.10 **Dispute Resolution**. The parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of Delaware and to the jurisdiction of the United States District Court for the District of Delaware for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the state courts of Delaware or the United States District Court for the District of Delaware, and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

WAIVER OF JURY TRIAL: EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS, THE SECURITIES OR THE SUBJECT MATTER HEREOF OR THEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY

COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

To the extent permitted by applicable law, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

6.11 **Delays or Omissions**. No delay or omission to exercise any right, power, or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power, or remedy of such non-breaching or non-defaulting party, nor shall it be construed to be a waiver of or acquiescence to any such breach or default, or to any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. All remedies, whether under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

**[Remainder of page intentionally left blank]**

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**COMPANY:**

**DAY ONE BIOPHARMACEUTICALS HOLDING COMPANY, LLC**

By: /s/ Jeremy Bender
Name: Jeremy Bender
Title: Chief Executive Officer

IN WITNESS WHEREOF, the parties have executed this Series B Preferred Share Purchase Agreement as of the date first written above.

**PURCHASERS:**

**JANUS HENDERSON GLOBAL LIFE SCIENCES FUND**

By: Janus Capital Management LLC, its investment advisor

By: /s/ Andrew Acker
Name: Andrew Acker
Title: Authorized Signatory

Address:
Email:

**JANUS HENDERSON CAPITAL FUNDS PLC ON BEHALF OF ITS SERIES JANUS HENDERSON GLOBAL LIFE SCIENCES FUND**

By: Janus Capital Management LLC, its investment advisor

By: /s/ Andrew Acker
Name: Andrew Acker
Title: Authorized Signatory

Address:
Email:

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**INVESTOR:**

**T. ROWE PRICE NEW HORIZONS FUND, INC.**
**T. ROWE PRICE NEW HORIZONS TRUST**
**T. ROWE PRICE U.S. EQUITIES TRUST**
**MASSMUTUAL SELECT FUNDS - MASSMUTUAL SELECT T. ROWE PRICE SMALL AND MID CAP BLEND FUND**
Each account, severally and not jointly

By: T. Rowe Price Associates, Inc., Investment Adviser or Subadviser, as applicable

By: /s/ Andrew Baek
Name: Andrew Baek
Title: Vice President

Address:
Phone:
E-mail:

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**INVESTOR**:

**T. ROWE PRICE HEALTH SCIENCES FUND, INC.**
**TD MUTUAL FUNDS - TD HEALTH SCIENCES FUND**
**T. ROWE PRICE HEALTH SCIENCES PORTFOLIO**
Each account, severally and not jointly

By: T. Rowe Price Associates, Inc., Investment Adviser or Subadviser, as applicable

By: /s/ Andrew Baek
Name: Andrew Baek
Title: Vice President

Address:
Phone:
E-mail:

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**INVESTOR:**

**FRANKLIN STRATEGIC SERIES - FRANKLIN BIOTECHNOLOGY DISCOVERY FUND**
**By: Franklin Advisers, Inc., its investment manager**

By: /s/ Evan McCulloch
Name: Evan McCulloch
Title: Vice President

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**INVESTOR:**

**ATLAS VENTURE FUND XI, L.P.**

By: Atlas Venture Associates XI, L.P.,
Its: General Partner

By: Atlas Venture Associates XI, LLC,
Its: General Partner

By: /s/ Ommer Chohan
Name: Ommer Chohan
Title: CFO

Address:

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**INVESTOR:**

**ATLAS VENTURE OPPORTUNITY FUND I, L.P.**

By: Atlas Venture Associates Opportunity I, L.P., its General Partner

By: Atlas Venture Associates Opportunity I, LLC, its General Partner

By: /s/ Ommer Chohan
Name: Ommer Chohan
Title: CFO

Address:

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**INVESTOR:**

**PERCEPTIVE LIFE SCIENCES MASTER FUND, LTD.**

By: Perceptive Advisors, LLC

By: /s/ James H. Mannix
Name: James H. Mannix
Title: Chief Operating Officer

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**INVESTOR:**

**AI DAY1 LLC**

By: Access Industries Management, LLC,
Its: Manager

By: /s/ Alejandro Moreno
Name: Alejandro Moreno
Title: Executive Vice President

By: /s/ Suzette Del Guidice
Name: Suzette Del Giudice
Title: Executive Vice President

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**INVESTORS:**

**BIOTECHNOLOGY VALUE FUND, L.P.**

By: BVF I GP LLC, its General Partner

By: /s/ Mark Lampert
Name: Mark Lampert
Title: Chief Executive Officer
Address:

**BIOTECHNOLOGY VALUE FUND II, L.P.**

By: BVF II GP LLC, its General Partner

By: /s/ Mark Lampert
Name: Mark Lampert
Title: Chief Executive Officer
Address:

**BIOTECHNOLOGY VALUE TRADING FUND OS, L.P.**

By: BVF Partners OS Ltd., its General Partner

By: BVF Partners L.P., its Sole Member

By: BVF Inc., its General Partner

By: /s/ Mark Lampert
Name: Mark Lampert
Title: President
Address:

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**INVESTORS**:

**BOXER CAPITAL, LLC**

By: /s/ Aaron Davis
Name: Aaron Davis
Title: Chief Executive Officer

**MVA INVESTORS, LLC**

By: /s/ Aaron Davis
Name: Aaron Davis
Title: Chief Executive Officer

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**INVESTOR:**

**VIKING GLOBAL OPPORTUNITIES ILLIQUID INVESTMENTS SUBMASTER LP**

**By: Viking Global Opportunities Portfolio GP LLC, its general partner**

By: /s/ Katerina Novak
Name: Katerina Novak
Title: Authorized Signatory

Address:

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**INVESTORS**:

RA Capital Healthcare Fund, L.P.

By: RA Capital Healthcare Fund GP, LLC Its General Partner

By: /s/ Peter Kolchinsky
Name: Peter Kolchinsky
Title: Manager
Address:

RA Capital NEXUS Fund II, L.P.

By: RA Capital Nexus Fund II GP, LLC
Its General Partner

By: /s/ Peter Kolchinsky
Name: Peter Kolchinsky
Title: Manager
Address:

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**INVESTOR**:

**LOGOS OPPORTUNITIES FUND II, L.P.**

By: Logos Opportunities GP, LLC
Its General Partner

By: /s/ Graham Walmsley
Name: Graham Walmsley
Title: Managing Member

Address:

By: /s/ Arsani William
Name: Arsani William
Title: Managing Partner

Address:

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**INVESTOR**:

**CANAAN XI L.P.**

By: Canaan Partners XI LLC, its General Partner

By: /s/ Tim Shannon
Name: Dr. Tim Shannon
Title: Manager/Member

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**INVESTOR**:

**CANAAN 2020+ CO-INVESTMENT L.P.**

By: Canaan Partners 2020+ Co-Investment LLC, as General Partner

By: Canaan Management LLC, its Manager

By: /s/ John J. Pacifico
Name: John J. Pacifico
Title: Chief Operating Officer

Address:

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**INVESTOR**:

By: /s/ Samuel Blackman
Name: Samuel Blackman

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**INVESTOR**:

By: /s/ Julie Papanek Grant
Name: Julie Papanek Grant

**SCHEDULE A**

INVESTORS

**Member Name and Address**

**Samuel Blackman**

**Julie Papanek Grant**

**Canaan XI L.P.**

**Atlas Venture Fund XI, L.P.**

**Atlas Venture Opportunity fund I, L.P.**

**AI Day1 LLC**
c/o Access Industries, Inc.
Email:

**RA Capital Healthcare Fund, L.P.**

**RA Capital Nexus Fund II, L.P.**

**Boxer Capital, LLC**

**MVA Investors, LLC**

**Janus Henderson Global Life Sciences Fund**
Email:

**Janus Henderson Capital Funds Plc- Janus Henderson Global Life Sciences Fund**
Email:

**Biotechnology Value Fund, L.P.**

**Biotechnology Value Fund II, L.P.**

**Biotechnology Value Trading Fund OS, L.P.**

**Perceptive Life Sciences Master Fund, Ltd.**

**Canaan 2020+ Co-Investment L.P.**

**Viking Global Opportunities Illiquid Investments Sub-Master LP**

**T. Rowe Price New Horizons Fund, Inc.**
Phone:
E-mail:

**T. Rowe Price New Horizons Trust**
Phone:
E-mail:

**T. Rowe Price U.S. Equities Trust**
Phone:
E-mail:

**MassMutual Select Funds—MassMutual Select T. Rowe Price Small and Mid Cap Blend Fund**
Phone:
E-mail:

**T. Rowe Price Health Sciences Fund, Inc.**
Phone:
E-mail:

**TD Mutual Funds - TD Health Sciences Fund**
Phone:
E-mail:

**T. Rowe Price Health Sciences Portfolio**
Phone:
E-mail:

**Franklin Strategic Series – Franklin Biotechnology Discovery Fund**
Phone:

**Exhibit 10.1**

# INDEMNITY AGREEMENT

This Indemnity Agreement, dated as of [_____], 2021 is made by and between Day One Biopharmaceuticals, Inc., a Delaware corporation (the "***Company***"), and [_____], a director, officer or key employee of the Company or one of the Company's subsidiaries or other service provider who satisfies the definition of Indemnifiable Person set forth below ("***Indemnitee***").

## RECITALS

A. The Company is aware that competent and experienced persons are increasingly reluctant to serve as representatives of corporations unless they are protected by comprehensive liability insurance and indemnification, due to increased exposure to litigation costs and risks resulting from their service to such corporations, and due to the fact that the exposure frequently bears no relationship to the compensation of such representatives;

B. The members of the Board of Directors of the Company (the "***Board***") have concluded that to retain and attract talented and experienced individuals to serve as representatives of the Company and its Subsidiaries and Affiliates and to encourage such individuals to take the business risks necessary for the success of the Company and its Subsidiaries and Affiliates, it is necessary for the Company to contractually indemnify certain of its representatives and the representatives of its Subsidiaries and Affiliates, and to assume for itself maximum liability for Expenses and Other Liabilities in connection with claims against such representatives in connection with their service to the Company and its Subsidiaries and Affiliates;

C. Section 145 of the Delaware General Corporation Law ("***Section 145***"), empowers the Company to indemnify by agreement its officers, directors, employees and agents, and persons who serve, at the request of the Company, as directors, officers, employees or agents of other corporations, partnerships, joint ventures, trusts or other enterprises, and expressly provides that the indemnification provided thereby is not exclusive; and

D. The Company desires and has requested Indemnitee to serve or continue to serve as a representative of the Company and/or the Subsidiaries or Affiliates of the Company free from undue concern about inappropriate claims for damages arising out of or related to such services to the Company and/or the Subsidiaries or Affiliates of the Company.

## AGREEMENT

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions.

(a) Affiliate. For purposes of this Agreement, "***Affiliate***" of the Company means any corporation, partnership, limited liability company, joint venture, trust or other enterprise in

respect of which Indemnitee is or was or will be serving as a director, officer, trustee, manager, member, partner, employee, agent, attorney, consultant, member of the entity's governing body (whether constituted as a board of directors, board of managers, general partner or otherwise), fiduciary, or in any other similar capacity at the request, election or direction of the Company, and including, but not limited to, any employee benefit plan of the Company or a Subsidiary or Affiliate of the Company.

(b) Change in Control. For purposes of this Agreement, "***Change in Control***" means (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended), other than a Subsidiary or a trustee or other fiduciary holding securities under an employee benefit plan of the Company or Subsidiary, is or becomes the "Beneficial Owner" (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Company representing 50% or more of the total voting power represented by the Company's then outstanding capital stock or (ii) during any period of two consecutive years, individuals who at the beginning of such period constitute the Board and any new director whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof, or (iii) the stockholders of the Company approve a merger or consolidation of the Company with any other corporation, other than a merger or consolidation that would result in the outstanding capital stock of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into capital stock of the surviving entity) at least 80% of the total voting power represented by the capital stock of the Company or such surviving entity outstanding immediately after such merger or consolidation, or the stockholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company (in one transaction or a series of transactions) of all or substantially all of the Company's assets.

(c) Expenses. For purposes of this Agreement, "***Expenses***" means all direct and indirect costs of any type or nature whatsoever (including, without limitation, all attorneys' fees and related disbursements, and other out-of-pocket costs), paid or incurred by Indemnitee in connection with either the investigation, defense or appeal of, or being a witness in, a Proceeding (as defined below), or establishing or enforcing a right to indemnification under this Agreement, Section 145 or otherwise; provided, however, that Expenses shall not include any judgments, fines, ERISA excise taxes or penalties or amounts paid in settlement of a Proceeding.

(d) Indemnifiable Event. For purposes of this Agreement, "***Indemnifiable Event***" means any event or occurrence related to Indemnitee's service for the Company or any Subsidiary or Affiliate as an Indemnifiable Person (as defined below), or by reason of anything done or not done, or any act or omission, by Indemnitee in any such capacity.

(e) Indemnifiable Person. For the purposes of this Agreement, "***Indemnifiable Person***" means any person who is or was a director, officer, trustee, manager, member, partner, employee, attorney, consultant, member of an entity's governing body (whether constituted as a board of directors, board of managers, general partner or otherwise) or other agent or fiduciary of the Company or a Subsidiary or Affiliate of the Company.

(f) Independent Counsel. For purposes of this Agreement, "***Independent Counsel***" means legal counsel that has not performed services for the Company or Indemnitee in the five years preceding the time in question and that would not, under applicable standards of professional conduct, have a conflict of interest in representing either the Company or Indemnitee.

(g) Independent Director. For purposes of this Agreement, "***Independent Director***" means a member of the Board who is not a party to the Proceeding for which a claim is made under this Agreement.

(h) Other Liabilities. For purposes of this Agreement, "***Other Liabilities***" means any and all liabilities of any type whatsoever (including, but not limited to, judgments, fines, penalties, ERISA (or other benefit plan related) excise taxes or penalties, and amounts paid in settlement and all interest, taxes, assessments and other charges paid or payable in connection with or in respect of any such judgments, fines, ERISA (or other benefit plan related) excise taxes or penalties, or amounts paid in settlement).

(i) Proceeding. For the purposes of this Agreement, "***Proceeding***" means any threatened, pending, or completed action, suit or other proceeding, whether civil, criminal, administrative, investigative, legislative or any other type whatsoever, preliminary, informal or formal, including any arbitration or other alternative dispute resolution and including any appeal of any of the foregoing.

(j) Subsidiary. For purposes of this Agreement, "***Subsidiary***" means any entity of which more than 50% of the outstanding voting securities is owned directly or indirectly by the Company.

2. Agreement to Serve. The Indemnitee agrees to serve and/or continue to serve as an Indemnifiable Person in the capacity or capacities in which Indemnitee currently serves the Company as an Indemnifiable Person, and any additional capacity in which Indemnitee may agree to serve, until such time as Indemnitee's service in a particular capacity shall end according to the terms of an agreement, the Company's Certificate of Incorporation or Bylaws, governing law, or otherwise. Nothing contained in this Agreement is intended to create any right to continued employment or other form of service for the Company or a Subsidiary or Affiliate of the Company by Indemnitee.

3. Mandatory Indemnification.

(a) Agreement to Indemnify. In the event Indemnitee is a person who was or is a party to or witness in or is threatened to be made a party to or witness in any Proceeding by reason of an Indemnifiable Event, the Company shall indemnify Indemnitee from and against any and all Expenses and Other Liabilities incurred by Indemnitee in connection with (including in preparation for) such Proceeding to the fullest extent not prohibited by the provisions of the Company's Bylaws and the Delaware General Corporation Law ("***DGCL***"), as the same may be amended from time to time (but only to the extent that such amendment permits the Company to provide broader indemnification rights than the Bylaws or the DGCL permitted prior to the adoption of such amendment).

(b) Exception for Amounts Covered by Insurance and Other Sources. Notwithstanding the foregoing, the Company shall not be obligated to indemnify Indemnitee for

Expenses or Other Liabilities of any type whatsoever (including, but not limited to judgments, fines, penalties, ERISA excise taxes or penalties and amounts paid in settlement) to the extent such have been paid directly to Indemnitee (or paid directly to a third party on Indemnitee's behalf) by any directors and officers, or other type, of insurance maintained by the Company; provided, however, that payment made to Indemnitee pursuant to an insurance policy purchased and maintained by Indemnitee at his or her own expense of any amounts otherwise indemnifiable or obligated to be made pursuant to this Agreement shall not reduce the Company's obligations to Indemnitee pursuant to this Agreement.

(c) Company Obligations Primary. The Company hereby acknowledges that Indemnitee may have rights to indemnification for Expenses and Other Liabilities provided by a venture capital firm or other sponsoring organization ("***Other Indemnitor***"). The Company agrees with Indemnitee that the Company is the indemnitor of first resort of Indemnitee with respect to matters for which indemnification is provided under this Agreement and that the Company will be obligated to make all payments due to or for the benefit of Indemnitee under this Agreement without regard to any rights that Indemnitee may have against the Other Indemnitor. The Company hereby waives any equitable rights to contribution or indemnification from the Other Indemnitor in respect of any amounts paid to indemnitee hereunder. The Company further agrees that no reimbursement of Other Liabilities or payment of Expenses by the Other Indemnitor to or for the benefit of Indemnitee shall affect the obligations of the Company hereunder, and that the Company shall be obligated to repay the Other Indemnitor for all amounts so paid or reimbursed to the extent that the Company has an obligation to indemnify Indemnitee for such Expenses or Other Liabilities hereunder.

4. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of any Expenses or Other Liabilities but not entitled, however, to indemnification for the total amount of such Expenses or Other Liabilities, the Company shall nevertheless indemnify Indemnitee for such total amount except as to the portion thereof for which indemnification is prohibited by the provisions of the Company's Bylaws or the DGCL. In any review or Proceeding to determine the extent of indemnification, the Company shall bear the burden to establish, by clear and convincing evidence, the lack of a successful resolution of a particular claim, issue or matter and which amounts sought in indemnity are allocable to claims, issues or matters which were not successfully resolved.

5. Liability Insurance. So long as Indemnitee shall continue to serve the Company or a Subsidiary or Affiliate of the Company as an Indemnifiable Person and thereafter so long as Indemnitee shall be subject to any possible claim or threatened, pending or completed Proceeding as a result of an Indemnifiable Event, the Company shall use reasonable efforts to maintain in full force and effect for the benefit of Indemnitee as an insured (i) liability insurance issued by one or more reputable insurers and having the policy amount and deductible deemed appropriate by the Board and providing in all respects coverage at least comparable to and in the same amount as that provided to the Chairman of the Board or the Chief Executive Officer of the Company and (ii) any replacement or substitute policies issued by one or more reputable insurers providing in all respects coverage at least comparable to and in the same amount as that being provided to the Chairman of the Board or the Chief Executive Officer of the Company. The purchase, establishment and maintenance of any such insurance or other arrangements shall not

in any way limit or affect the rights and obligations of the Company or of Indemnitee under this Agreement except as expressly provided herein, and the execution and delivery of this Agreement by the Company and Indemnitee shall not in any way limit or affect the rights and obligations of the Company or the other party or parties thereto under any such insurance or other arrangement. In the event of a Change in Control subsequent to the date of this Agreement, or the Company's becoming insolvent, including being placed into receivership or entering the federal bankruptcy process, the Company shall maintain in force any and all insurance policies then maintained by the Company in providing insurance—directors' and officers' liability, fiduciary, employment practices or otherwise—in respect of the individual directors and officers of the Company, for a fixed period of six years thereafter. Such coverage shall be non-cancelable and shall be placed and serviced by the Company's incumbent insurance broker or a broker selected by a majority of the Independent Directors.

6. Mandatory Advancement of Expenses. If requested by Indemnitee, the Company shall advance prior to the final disposition of the Proceeding all Expenses reasonably incurred by Indemnitee in connection with (including in preparation for) a Proceeding related to an Indemnifiable Event within (30) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee. The right to advances under this section shall in all events continue until final disposition of any Proceeding, including any appeal therein. Indemnitee hereby undertakes to repay such amounts advanced if, and only if and to the extent that, it shall ultimately be determined that Indemnitee is not entitled to be indemnified by the Company under the provisions of this Agreement, the Company's Bylaws or the DGCL, and no additional form of undertaking with respect to such obligation to repay shall be required. Indemnitee's undertaking to repay any Expenses advanced to Indemnitee hereunder shall be unsecured and shall not be subject to the accrual or payment of any interest thereon. In the event that Indemnitee's request for the advancement of expenses shall be accompanied by an affidavit of counsel to Indemnitee to the effect that such counsel has reviewed such Expenses and that such Expenses are reasonable in such counsel's view, then such expenses shall be deemed reasonable in the absence of clear and convincing evidence to the contrary.

7. Notice and Other Indemnification Procedures.

(a) Notification. Promptly after receipt by Indemnitee of notice of the commencement of or the threat of commencement of any Proceeding, unless the Company is a named co-defendant with Indemnitee, Indemnitee shall, if Indemnitee believes that indemnification or advancement of Expenses with respect thereto may be sought from the Company under this Agreement, notify the Company of the commencement or threat of commencement thereof. However, a failure so to notify the Company promptly following Indemnitee's receipt of such notice shall not relieve the Company from any liability that it may have to Indemnitee except to the extent that the Company is materially prejudiced in its defense of such Proceeding as a result of such failure.

(b) Insurance and Other Matters. If, at the time of the receipt of a notice of the commencement of a Proceeding pursuant to Section 7(a) above, the Company has director and officer liability insurance in effect, the Company shall give prompt notice of the commencement of such Proceeding to the issuers in accordance with the procedures set forth in the respective

policies. The Company shall thereafter take all reasonable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such insurance policies. In addition, the Company will instruct the insurers and the Company's insurance broker that they may communicate directly with Indemnitee regarding such claim.

(c) Assumption of Defense. In the event the Company shall be obligated to advance the Expenses for any Proceeding against Indemnitee, the Company, if deemed appropriate by the Company, shall be entitled to assume the defense of such Proceeding as provided herein. Such defense by the Company may include the representation of two or more parties by one attorney or law firm as permitted under the ethical rules and legal requirements related to joint representations. Following delivery of written notice to Indemnitee of the Company's election to assume the defense of such Proceeding, the approval by Indemnitee (which approval shall not be unreasonably withheld) of counsel designated by the Company and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees and expenses of counsel subsequently incurred by Indemnitee with respect to the same Proceeding. If (A) the employment of counsel by Indemnitee has been previously authorized by the Company, (B) Indemnitee shall have notified the Board in writing that Indemnitee has reasonably concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense, (C) the Company fails to employ counsel to assume the defense of such Proceeding, or (D) after a Change in Control, the employment of counsel by Indemnitee has been approved by the Independent Counsel, the Expenses related to work conducted by Indemnitee's counsel shall be subject to indemnification and/or advancement pursuant to the terms of this Agreement. Nothing herein shall prevent Indemnitee from employing counsel for any such Proceeding at Indemnitee's expense. Indemnitee agrees that any such separate counsel retained by Indemnitee will be a member of any approved list of panel counsel under the Company's applicable directors' and officers' insurance policy, should the applicable policy provide for a panel of approved counsel.

(d) Settlement. The Company shall not be liable to indemnify Indemnitee under this Agreement or otherwise for any amounts paid in settlement of any Proceeding effected without the Company's written consent; provided, however, that if a Change in Control has occurred subsequent to the date of this Agreement, the Company shall be liable for indemnification of Indemnitee for amounts paid in settlement if the Independent Counsel has approved the settlement. Neither the Company nor any Subsidiary or Affiliate shall enter into a settlement of any Proceeding that might result in the imposition of any Expense, Other Liability, penalty, limitation or detriment on Indemnitee, whether indemnifiable under this Agreement or otherwise, without Indemnitee's written consent. Neither the Company nor Indemnitee shall unreasonably withhold consent from any settlement of any Proceeding. The Company shall promptly notify Indemnitee upon the Company's receipt of an offer to settle, or if the Company makes an offer to settle, any Proceeding, and provide Indemnitee with a reasonable amount of time to consider such settlement, in the case of any such settlement for which the consent of Indemnitee would be required hereunder. The Company shall not, on its own behalf, settle any part of any Proceeding to which Indemnitee is a party with respect to other parties (including the Company) without the written consent of Indemnitee if any portion of the settlement is to be funded from insurance proceeds unless approved by a majority of the Independent Directors, provided that this sentence shall cease to be of any force and effect if it has been determined in accordance with this Agreement that Indemnitee is not entitled to indemnification hereunder with respect to such Proceeding or if the Company's obligations hereunder to Indemnitee with respect to such Proceeding have been fully discharged.

8. Determination of Right to Indemnification.

(a) Success on the Merits or Otherwise. To the extent that Indemnitee has been successful on the merits or otherwise in defense of any Proceeding referred to in Section 3(a) above or in the defense of any claim, issue or matter described therein, the Company shall indemnify Indemnitee against Expenses actually and reasonably incurred in connection therewith.

(b) Indemnification in Other Situations. In the event that Section 8(a) is inapplicable, the Company shall also indemnify Indemnitee if Indemnitee has not failed to meet the applicable standard of conduct for indemnification.

(c) Forum. Indemnitee shall be entitled to select the forum in which determination of whether or not Indemnitee has met the applicable standard of conduct shall be decided, and such election will be made from among the following:

a. Those members of the Board who are Independent Directors even though less than a quorum;

b. A committee of Independent Directors designated by a majority vote of Independent Directors, even though less than a quorum; or

c. Independent Counsel selected by Indemnitee and approved by the Board, which approval may not be unreasonably withheld, which counsel shall make such determination in a written opinion.

If Indemnitee is an officer or a director of the Company at the time that Indemnitee is selecting the forum, then Indemnitee shall not select Independent Counsel as such forum unless there are no Independent Directors or unless the Independent Directors agree to the selection of Independent Counsel as the forum.

The selected forum shall be referred to herein as the “Reviewing Party”. Notwithstanding the foregoing, following any Change in Control subsequent to the date of this Agreement, the Reviewing Party shall be Independent Counsel selected in the manner provided in c. above.

(d) Decision Timing and Expenses. As soon as practicable, and in no event later than thirty (30) days after receipt by the Company of written notice of Indemnitee’s choice of forum pursuant to Section 8(c) above, the Company and Indemnitee shall each submit to the Reviewing Party such information as they believe is appropriate for the Reviewing Party to consider. The Reviewing Party shall arrive at its decision within a reasonable period of time following the receipt of all such information from the Company and Indemnitee, but in no event later than thirty (30) days following the receipt of all such information, provided that the time by which the Reviewing Party must reach a decision may be extended by mutual agreement of the Company and Indemnitee. All Expenses associated with the process set forth in this Section 8(d), including but not limited to the Expenses of the Reviewing Party, shall be paid by the Company.

(e) Delaware Court of Chancery. Notwithstanding a final determination by any Reviewing Party that Indemnitee is not entitled to indemnification with respect to a specific Proceeding, Indemnitee shall have the right to apply to the Court of Chancery, for the purpose of enforcing Indemnitee’s right to indemnification pursuant to this Agreement.

(f) Expenses. The Company shall indemnify Indemnitee against all Expenses incurred by Indemnitee in connection with any hearing or Proceeding under this Section 8 involving Indemnitee and against all Expenses and Other Liabilities incurred by Indemnitee in connection with any other Proceeding between the Company and Indemnitee involving the interpretation or enforcement of the rights of Indemnitee under this Agreement unless a court of competent jurisdiction finds that each of the material claims of Indemnitee in any such Proceeding was frivolous or made in bad faith.

(g) Determination of "Good Faith". For purposes of any determination of whether Indemnitee acted in "good faith" or acted in "bad faith," Indemnitee shall be deemed to have acted in good faith or not acted in bad faith if in taking or failing to take the action in question Indemnitee relied on the records or books of account of the Company or a Subsidiary or Affiliate, including financial statements, or on information, opinions, reports or statements provided to Indemnitee by the officers or other employees of the Company or a Subsidiary or Affiliate in the course of their duties, or on the advice of legal counsel for the Company or a Subsidiary or Affiliate, or on information or records given or reports made to the Company or a Subsidiary or Affiliate by an independent certified public accountant or by an appraiser or other expert selected by the Company or a Subsidiary or Affiliate, or by any other person (including legal counsel, accountants and financial advisors) as to matters Indemnitee reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company or a Subsidiary or Affiliate. In connection with any determination as to whether Indemnitee is entitled to be indemnified hereunder, or to advancement of Expenses, the Reviewing Party or court shall presume that Indemnitee has satisfied the applicable standard of conduct and is entitled to indemnification or advancement of Expenses, as the case may be, and the burden of proof shall be on the Company to establish, by clear and convincing evidence, that Indemnitee is not so entitled. The provisions of this Section 8(g) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement. In addition, the knowledge and/or actions, or failures to act, of any other person serving the Company or a Subsidiary or Affiliate as an Indemnifiable Person shall not be imputed to Indemnitee for purposes of determining the right to indemnification hereunder.

9. Exceptions. Any other provision herein to the contrary notwithstanding,

(a) Claims Initiated by Indemnitee. The Company shall not be obligated pursuant to the terms of this Agreement to indemnify or advance Expenses to Indemnitee with respect to Proceedings or claims initiated or brought voluntarily by Indemnitee and not by way of defense, except (1) with respect to Proceedings brought to establish or enforce a right to indemnification under this Agreement, any other statute or law, as permitted under Section 145, or otherwise, (2) where the Board has consented to the initiation of such Proceeding, or (3) with respect to Proceedings brought to discharge Indemnitee's fiduciary responsibilities, whether under ERISA or otherwise, but such indemnification or advancement of Expenses may be provided by the Company in specific cases if the Board finds it to be appropriate; or

(b) Actions Based on Federal Statutes Regarding Profit Recovery and Return of Bonus Payments. The Company shall not be obligated pursuant to the terms of this Agreement to

indemnify Indemnitee on account of (i) any suit in which judgment is rendered against Indemnitee for an accounting of profits made from the purchase or sale by Indemnitee of securities of the Company pursuant to the provisions of Section 16(b) of the Securities Exchange Act of l934 and amendments thereto or similar provisions of any federal, state or local statutory law, or (ii) any reimbursement of the Company by the Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by the Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "***Sarbanes-Oxley Act***"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act); or

(c) Unlawful Indemnification. The Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee for Other Liabilities if such indemnification is prohibited by law as determined by a court of competent jurisdiction in a final adjudication not subject to further appeal.

10. Non-exclusivity. The provisions for indemnification and advancement of Expenses set forth in this Agreement shall not be deemed exclusive of any other rights which Indemnitee may have under any provision of law, the Company's Certificate of Incorporation or Bylaws, the vote of the Company's stockholders or disinterested directors, other agreements, or otherwise, both as to acts or omissions in his or her official capacity and to acts or omissions in another capacity while serving the Company or a Subsidiary or Affiliate as an Indemnifiable Person and Indemnitee's rights hereunder shall continue after Indemnitee has ceased serving the Company or a Subsidiary or Affiliate as an Indemnifiable Person and shall inure to the benefit of the heirs, executors and administrators of Indemnitee.

11. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever, (i) the validity, legality and enforceability of the remaining provisions of the Agreement (including, without limitation, all portions of any paragraphs of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby, and (ii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, all portions of any paragraphs of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

12. Supersession, Modification and Waiver. This Agreement supersedes any prior indemnification agreement between the Indemnitee and the Company, its Subsidiaries or its Affiliates. If the Company and Indemnitee have previously entered into an indemnification agreement providing for the indemnification of Indemnitee by the Company, parties entry into this Agreement shall be deemed to amend and restate such prior agreement to read in its entirety as, and be superseded by, this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar) and except as expressly provided herein, no such waiver shall constitute a continuing waiver.

13. Successors and Assigns. The terms of this Agreement shall bind, and shall inure to the benefit of, and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), assigns, spouses, heirs and personal and legal representatives. In addition, the Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all, or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement and indemnify Indemnitee to the fullest extent permitted by law.

14. Notice. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed duly given (i) if delivered by hand and a receipt is provided by the party to whom such communication is delivered, (ii) if mailed by certified or registered mail with postage prepaid, return receipt requested, on the signing by the recipient of an acknowledgement of receipt form accompanying delivery through the U.S. mail, (iii) by personal service by a process server, or (iv) by delivery to the recipient's address by overnight delivery (e.g., FedEx, UPS or DHL) or other commercial delivery service. Addresses for notice to either party are as shown on the signature page of this Agreement, or as subsequently modified by written notice complying with the provisions of this Section 14. Delivery of communications to the Company with respect to this Agreement shall be sent to the attention of the Company's Chief Financial Officer.

15. No Presumptions. For purposes of this Agreement, the termination of any Proceeding, by judgment, order, settlement (whether with or without court approval) or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that Indemnitee did not meet any particular standard of conduct or have any particular belief or that a court has determined that indemnification is not permitted by applicable law or otherwise. In addition, neither the failure of the Company or a Reviewing Party to have made a determination as to whether Indemnitee has met any particular standard of conduct or had any particular belief, nor an actual determination by the Company or a Reviewing Party that Indemnitee has not met such standard of conduct or did not have such belief, prior to the commencement of Proceedings by Indemnitee to secure a judicial determination by exercising Indemnitee's rights under Section 8(e) of this Agreement shall be a defense to Indemnitee's claim or create a presumption that Indemnitee has failed to meet any particular standard of conduct or did not have any particular belief or is not entitled to indemnification under applicable law or otherwise.

16. Survival of Rights. The rights conferred on Indemnitee by this Agreement shall continue after Indemnitee has ceased to serve the Company or a Subsidiary or Affiliate of the Company as an Indemnifiable Person and shall inure to the benefit of Indemnitee's heirs, executors and administrators.

17. Subrogation and Contribution.

(a) Except as otherwise expressly provided in this Agreement, in the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all documents required and shall do all acts that may be necessary to secure such rights and to enable the Company effectively to bring suit to enforce such rights.

(b) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by or on behalf of Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

18. Specific Performance, Etc. The parties recognize that if any provision of this Agreement is violated by the Company, Indemnitee may be without an adequate remedy at law. Accordingly, in the event of any such violation, Indemnitee shall be entitled, if Indemnitee so elects, to institute Proceedings, either in law or at equity, to obtain damages, to enforce specific performance, to enjoin such violation, or to obtain any relief or any combination of the foregoing as Indemnitee may elect to pursue.

19. Counterparts. This Agreement may be executed in counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

20. Headings. The headings of the sections and paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction or interpretation thereof.

21. Governing Law. This Agreement shall be governed exclusively by and construed according to the laws of the State of Delaware, as applied to contracts between Delaware residents entered into and to be performed entirely with Delaware.

22. Consent to Jurisdiction. The Company and Indemnitee each hereby irrevocably consent to the jurisdiction of the courts of the State of Delaware for all purposes in connection with any Proceeding which arises out of or relates to this Agreement.

[*Signature Page Follows*]

The parties hereto have entered into this Indemnity Agreement effective as of the date first above written.

**DAY ONE BIOPHARMACEUTICALS, INC.:**

By: _____

Its: _____

**INDEMNITEE:**

_____

Address: _____

_____

**DAY ONE BIOPHARMACEUTICALS, INC.**
**2021 EQUITY INCENTIVE PLAN**

**1. PURPOSE**. The purpose of this Plan is to provide incentives to attract, retain, and motivate eligible persons whose present and potential contributions are important to the success of the Company, and any Parents, Subsidiaries, and Affiliates that exist now or in the future, by offering them an opportunity to participate in the Company's future performance through the grant of Awards. Capitalized terms not defined elsewhere in the text are defined in Section 28.

**2. SHARES SUBJECT TO THE PLAN**.

**2.1.** Number of Shares Available. Subject to Sections 2.6 and 21 and any other applicable provisions hereof, the total number of Shares reserved and available for grant and issuance pursuant to this Plan as of the date of adoption of the Plan by the Board, is Shares, plus (a) any Shares subject to outstanding awards granted under the Company's Incentive Share Plan, as amended (the "***Prior Plan***") that cease to be subject to such awards by forfeiture or otherwise after the Effective Date, (b) Shares issued under the Prior Plans that are repurchased by the Company, withheld to satisfy any tax withholding obligations related to any award, or are otherwise forfeited. To the extent that the number of Shares receivable by any Participant with respect to such Participant's incentive shares under the Prior Plan is subject to any reduction on account of the threshold applicable to such incentive shares (the amount of Shares subject to such reduction, the "***Reduced Shares***"), then, in addition to the shares reserved for issuance pursuant to 2.1(a) and 2.1(b), a number of Shares equal to the number of Reduced Shares shall be reserved and available for grant and issuance pursuant to this Plan.

**2.2.** Lapsed, Returned Awards. Shares subject to Awards, and Shares issued under the Plan under any Award, will again be available for grant and issuance in connection with subsequent Awards under this Plan to the extent such Shares: (a) are subject to issuance upon exercise of an Option or SAR granted under this Plan but which cease to be subject to the Option or SAR for any reason other than exercise of the Option or SAR, (b) are subject to Awards granted under this Plan that are forfeited or are repurchased by the Company at the original issue price, (c) are subject to Awards granted under this Plan that otherwise terminate without such Shares being issued or (d) are surrendered pursuant to an Exchange Program. To the extent an Award under the Plan is paid out in cash or other property rather than Shares, such cash payment will not result in reducing the number of Shares available for issuance under the Plan. Shares used to pay the exercise price of an Award or withheld to satisfy the tax withholding obligations related to an Award will become available for grant and issuance in connection with subsequent Awards under this Plan. For the avoidance of doubt, Shares that otherwise become available for grant and issuance because of the provisions of this Section 2.2 will not include Shares subject to Awards that initially became available because of the substitution clause in Section 21.2 hereof.

**2.3.** Minimum Share Reserve. At all times the Company will reserve and keep available a sufficient number of Shares as will be required to satisfy the requirements of all outstanding Awards granted under this Plan.

**2.4.** Automatic Share Reserve Increase. The number of Shares available for grant and issuance under the Plan will be increased on January 1st of each of 2022 through 2031, by the lesser of (a) five percent (5%) of the number of shares of all classes of the Company's common stock, plus the total number of shares of Company common stock issuable upon conversion of any preferred stock or exercise of any Pre-Funded Warrants issued and outstanding on each December 31 immediately prior to the date of increase or (b) such number of Shares determined by the Board.

**2.5.** ISO Limitation. No more than Shares will be issued pursuant to the exercise of ISOs granted under the Plan.

**2.6.** Adjustment of Shares. If the number or class of outstanding Shares is changed by a stock dividend, extraordinary dividend or distribution (whether in cash, shares, or other property, other than a regular cash dividend), recapitalization, stock split, reverse stock split, subdivision, combination, consolidation, reclassification, spin-off, or similar change in the capital structure of the Company, without consideration, then (a) the number and class of Shares reserved for issuance and future grant under the Plan set forth in Section 2.1, including Shares reserved under sub-clauses (a)-(e) of Section 2.1, (b) the Exercise Prices of and number and class of Shares subject to outstanding Options and SARs, (c) the number and class of Shares subject to other outstanding Awards and (d) the maximum number and class of Shares that may be issued as ISOs set forth in Section 2.5, will be proportionately adjusted, subject to any required action by the Board or the stockholders of the Company and in compliance with applicable securities or other laws, provided that fractions of a Share will not be issued.

If, by reason of an adjustment pursuant to this Section 2.6, a Participant's Award Agreement or other agreement related to any Award, or the Shares subject to such Award, covers additional or different shares of stock or securities, then such additional or different shares, and the Award Agreement or such other agreement in respect thereof, will be subject to all of the terms, conditions, and restrictions which were applicable to the Award or the Shares subject to such Award prior to such adjustment.

**3. ELIGIBILITY**. ISOs may be granted only to Employees. All other Awards may be granted to Employees, Consultants, Directors, and Non-Employee Directors, provided that such Consultants, Directors, and Non-Employee Directors render bona fide services not in connection with the offer and sale of securities in a capital-raising transaction.

**4. ADMINISTRATION**.

**4.1.** Committee Composition; Authority. This Plan will be administered by the Committee or by the Board acting as the Committee. Subject to the general purposes, terms, and conditions of this Plan, and to the direction of the Board, the Committee will have full power to implement and carry out this Plan, except, however, the Board will establish the terms for the grant of an Award to Non-Employee Directors. The Committee will have the authority to:

(a) construe and interpret this Plan, any Award Agreement, and any other agreement or document executed pursuant to this Plan;

(b) prescribe, amend, and rescind rules and regulations relating to this Plan or any Award;

(c) select persons to receive Awards;

(d) determine the form and terms and conditions, not inconsistent with the terms of the Plan, of any Award granted hereunder. Such terms and conditions include, but are not limited to, the Exercise Price, the time or times when Awards may vest and be exercised (which may be based on performance criteria) or settled, any vesting acceleration or waiver of forfeiture restrictions, the method to satisfy tax withholding obligations or any other tax liability legally due, and any restriction or limitation regarding any Award or the Shares relating thereto, based in each case on such factors as the Committee will determine;

(e) determine the number of Shares or other consideration subject to Awards;

(f) determine the Fair Market Value in good faith and interpret the applicable provisions of this Plan and the definition of Fair Market Value in connection with circumstances that impact the Fair Market Value, if necessary;

(g) determine whether Awards will be granted singly, in combination with, in tandem with, in replacement of, or as alternatives to, other Awards under this Plan or any other incentive or compensation plan of the Company or any Parent, Subsidiary, or Affiliate;

(h) grant waivers of Plan or Award conditions;

(i) determine the vesting, exercisability, and payment of Awards;

(j) correct any defect, supply any omission or reconcile any inconsistency in this Plan, any Award or any Award Agreement;

(k) determine whether an Award has been vested and/or earned;

(l) determine the terms and conditions of any, and to institute any Exchange Program;

(m) reduce, waive or modify any criteria with respect to Performance Factors;

(n) adjust Performance Factors to take into account changes in law and accounting or tax rules as the Committee deems necessary or appropriate to reflect the impact of extraordinary or unusual items, events, or circumstances to avoid windfalls or hardships;

(o) adopt terms and conditions, rules, and/or procedures (including the adoption of any subplan under this Plan) relating to the operation and administration of the Plan to accommodate requirements of local law and procedures outside of the United States or to qualify Awards for special tax treatment under laws of jurisdictions other than the United States;

(p) exercise discretion with respect to Performance Awards;

(q) make all other determinations necessary or advisable for the administration of this Plan; and

(r) delegate any of the foregoing to a subcommittee or to one or more executive officers pursuant to a specific delegation as permitted by applicable law, including Section 157(c) of the Delaware General Corporation Law.

**4.2.** Committee Interpretation and Discretion. Any determination made by the Committee with respect to any Award will be made in its sole discretion at the time of grant of the Award or, unless in contravention of any express term of the Plan or Award, at any later time, and such determination will be final and binding on the Company and all persons having an interest in any Award under the Plan. Any dispute regarding the interpretation of the Plan or any Award Agreement will be submitted by the Participant or Company to the Committee for review. The resolution of such a dispute by the Committee will be final and binding on the Company and the Participant. The Committee may delegate to one or more executive officers the authority to review and resolve disputes with respect to Awards held by Participants who are not Insiders, and such resolution will be final and binding on the Company and the Participant.

**4.3.** Section 16 of the Exchange Act. Awards granted to Participants who are subject to Section 16 of the Exchange Act must be approved by two or more "non-employee directors" (as defined in the regulations promulgated under Section 16 of the Exchange Act).

**4.4.** Documentation. The Award Agreement for a given Award, the Plan, and any other documents may be delivered to, and accepted by, a Participant or any other person in any manner (including electronic distribution or posting) that meets applicable legal requirements.

**4.5.** Foreign Award Recipients. Notwithstanding any provision of the Plan to the contrary, in order to comply with the laws and practices in other countries in which the Company, its Subsidiaries, and Affiliates operate or have Employees or other individuals eligible for Awards, the Committee, in its sole discretion, will have the power and authority to: (a) determine which Subsidiaries and Affiliates will be covered by the Plan; (b) determine which individuals outside the United States are eligible to participate in the Plan, which may include individuals who provide services to the Company, Subsidiary or Affiliate under an agreement with a foreign nation or agency; (c) modify the terms and conditions of any Award granted to individuals outside the United States or foreign nationals to comply with applicable foreign laws, policies, customs, and practices; (d) establish subplans and modify exercise procedures, vesting conditions, and other terms and procedures to the extent the Committee determines such actions to be necessary or advisable (and such subplans and/or modifications will be attached to this Plan as appendices, if necessary); and (e) take any action, before or after an Award is made, that the Committee determines to be necessary or advisable to obtain approval or comply with any local governmental regulatory exemptions or approvals, provided, however, that no action taken under this Section 4.5 will increase the Share limitations contained in Section 2.1 hereof. Notwithstanding the foregoing, the Committee may not take any actions hereunder, and no Awards will be granted, that would violate the Exchange Act or any other applicable United States securities law, the Code, or any other applicable United States governing statute or law.

**5. OPTIONS**. An Option is the right but not the obligation to purchase a Share, subject to certain conditions, if applicable. The Committee may grant Options to eligible Employees, Consultants, and Directors and will determine whether such Options will be Incentive Stock Options within the meaning of the Code ("***ISOs***") or Nonqualified Stock Options ("***NSOs***"), the number of Shares subject to the Option, the Exercise Price of the Option, the period during which the Option may vest and be exercised, and all other terms and conditions of the Option, subject to the following terms of this section.

**5.1.** Option Grant. Each Option granted under this Plan will identify the Option as an ISO or an NSO. An Option may be, but need not be, awarded upon satisfaction of such Performance Factors during any Performance Period as are set out in advance in the Participant's individual Award Agreement. If the Option is being earned upon the satisfaction of Performance Factors, then the Committee will: (a) determine the nature, length, and starting date of any Performance Period for each Option; and (b) select from among the Performance Factors to be used to measure the performance, if any. Performance Periods may overlap and Participants may participate simultaneously with respect to Options that are subject to different performance goals and other criteria.

**5.2.** Date of Grant. The date of grant of an Option will be the date on which the Committee makes the determination to grant such Option, or a specified future date. The Award Agreement will be delivered to the Participant within a reasonable time after the granting of the Option.

**5.3.** Exercise Period. Options may be vested and exercisable within the times or upon the conditions as set forth in the Award Agreement governing such Option, provided, however, that no Option will be exercisable after the expiration of ten (10) years from the date the Option is granted and provided further that no ISO granted to a person who, at the time the ISO is granted, directly or by attribution owns more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or of any Parent or Subsidiary ("***Ten Percent Stockholder***") will be exercisable after the expiration of five (5) years from the date the ISO is granted. The Committee also may provide for Options to become exercisable at one time or from time to time, periodically or otherwise, in such number of Shares or percentage of Shares as the Committee determines.

**5.4.** Exercise Price. The Exercise Price of an Option will be determined by the Committee when the Option is granted, provided that: (a) the Exercise Price of an Option will be not less than one hundred percent (100%) of the Fair Market Value of the Shares on the date of grant, and (b) the Exercise Price of any ISO granted to a Ten Percent Stockholder will not be less than one hundred ten percent (110%) of the Fair Market Value of the Shares on the date of grant. Payment for the Shares purchased may be made in accordance with Section 11 and the Award Agreement and in accordance with any procedures established by the Company.

**5.5.** Method of Exercise. Any Option granted hereunder will be vested and exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Committee and set forth in the Award Agreement. An Option may not be exercised for a fraction of a Share. An Option will be deemed exercised when the Company receives: (a) notice of exercise (in such form as the Committee may specify from time to time) from the person entitled to exercise the Option (and/or via electronic execution through the authorized third-party administrator), and (b) full payment for the Shares with respect to which the Option is exercised (together with applicable withholding taxes). Full payment may consist of any consideration and method of payment authorized by the Committee and permitted by the Award Agreement and the Plan. Shares issued upon exercise of an Option will be issued in the name of the Participant. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder will exist with respect to the Shares, notwithstanding the exercise of the Option. The Company will issue (or cause to be issued) such Shares promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 2.6 of the Plan. Exercising an Option in any manner will decrease the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

**5.6.** Termination of Service. If the Participant's Service terminates for any reason except for Cause or the Participant's death or Disability, then the Participant may exercise such Participant's Options only to the extent that such Options would have been exercisable by the Participant on the date Participant's Service terminates no later than three (3) months after the date Participant's Service terminates (or such shorter or longer time period as may be determined by the Committee, with any exercise of an ISO beyond three (3) months after the date Participant's employment terminates deemed to be the exercise of an NSO), but in any event no later than the expiration date of the Options.

(a) Death. If the Participant's Service terminates because of the Participant's death (or the Participant dies within three (3) months after Participant's Service terminates other than for Cause or because of the Participant's Disability), then the Participant's Options may be exercised only to the extent that such Options would have been exercisable by the Participant on the date Participant's Service terminates and must be exercised by the Participant's legal representative, or authorized assignee, no later than twelve (12) months after the date Participant's Service terminates (or such shorter or longer time period as may be determined by the Committee), but in any event no later than the expiration date of the Options.

(b) Disability. If the Participant's Service terminates because of the Participant's Disability, then the Participant's Options may be exercised only to the extent that such Options would have been exercisable by the Participant on the date Participant's Service terminates and must be exercised by the Participant (or the Participant's legal representative or authorized assignee) no later than twelve (12)

months after the date Participant's Service terminates (or such shorter or longer time period as may be determined by the Committee, with any exercise beyond (a) three (3) months after the date Participant's employment terminates when the termination of Service is for a Disability that is not a "permanent and total disability" as defined in Section 22(e)(3) of the Code or (b) twelve (12) months after the date Participant's employment terminates when the termination of Service is for a Disability that is a "permanent and total disability" as defined in Section 22(e)(3) of the Code, deemed to be exercise of an NSO), but in any event no later than the expiration date of the Options.

(c) Cause. Unless otherwise determined by the Committee, if the Participant's Service terminates for Cause, then Participant's Options (whether or not vested) will expire on the date of termination of Participant's Service if the Committee has reasonably determined in good faith that such cessation of Services has resulted in connection with an act or failure to act constituting Cause (or such Participant's Services could have been terminated for Cause (without regard to the lapsing of any required notice or cure periods in connection therewith) at the time such Participant terminated Service), or at such later time and on such conditions as are determined by the Committee, but in any event no later than the expiration date of the Options. Unless otherwise provided in an employment agreement, Award Agreement, or other applicable agreement, Cause will have the meaning set forth in the Plan.

**5.7.** Limitations on ISOs. With respect to Awards granted as ISOs, to the extent that the aggregate Fair Market Value of the Shares with respect to which such ISOs are exercisable for the first time by the Participant during any calendar year (under all plans of the Company and any Parent or Subsidiary) exceeds one hundred thousand dollars ($100,000), such Options will be treated as NSOs. For purposes of this Section 5.7, ISOs will be taken into account in the order in which they were granted. The Fair Market Value of the Shares will be determined as of the time the Option with respect to such Shares is granted. In the event that the Code or the regulations promulgated thereunder are amended after the Effective Date to provide for a different limit on the Fair Market Value of Shares permitted to be subject to ISOs, such different limit will be automatically incorporated herein and will apply to any Options granted after the effective date of such amendment.

**5.8.** Modification, Extension or Renewal. The Committee may modify, extend, or renew outstanding Options and authorize the grant of new Options in substitution therefor, provided that any such action may not, without the written consent of a Participant, impair any of such Participant's rights under any Option previously granted. Any outstanding ISO that is modified, extended, renewed, or otherwise altered will be treated in accordance with Section 424(h) of the Code. Subject to Section 18 of this Plan, by written notice to affected Participants, the Committee may reduce the Exercise Price of outstanding Options without the consent of such Participants, provided, however, that the Exercise Price may not be reduced below the Fair Market Value on the date the action is taken to reduce the Exercise Price.

**5.9.** No Disqualification. Notwithstanding any other provision in this Plan, no term of this Plan relating to ISOs will be interpreted, amended, or altered, nor will any discretion or authority granted under this Plan be exercised, so as to disqualify this Plan under Section 422 of the Code or, without the consent of the Participant affected, to disqualify any ISO under Section 422 of the Code.

**6. RESTRICTED STOCK UNITS**. A Restricted Stock Unit ("***RSU***") is an award to an eligible Employee, Consultant, or Director covering a number of Shares that may be settled by issuance of those Shares (which may consist of Restricted Stock) or in cash. All RSUs will be made pursuant to an Award Agreement.

**6.1.** Terms of RSUs. The Committee will determine the terms of an RSU including, without limitation: (a) the number of Shares subject to the RSU, (b) the time or times during which the RSU may be settled, (c) the consideration to be distributed on settlement, and (d) the effect of the Participant's termination of Service on each RSU, provided that no RSU will have a term longer than ten (10) years. An RSU may be awarded upon satisfaction of such performance goals based on Performance Factors during any Performance Period as are set out in advance in the Participant's Award Agreement. If the RSU is being earned upon satisfaction of Performance Factors, then the Committee will: (i) determine the nature, length, and starting date of any Performance Period for the RSU; (ii) select from among the Performance Factors to be used to measure the performance, if any; and (iii) determine the number of Shares deemed subject to the RSU. Performance Periods may overlap and Participants may participate simultaneously with respect to RSUs that are subject to different Performance Periods and different performance goals and other criteria.

**6.2.** Form and Timing of Settlement. Payment of earned RSUs will be made as soon as practicable after the date(s) determined by the Committee and set forth in the Award Agreement. The Committee, in its sole discretion, may settle earned RSUs in cash, Shares, or a combination of both. The Committee may also permit a Participant to defer payment under a RSU to a date or dates after the RSU is earned, provided that the terms of the RSU and any deferral satisfy the requirements of Section 409A of the Code to the extent applicable.

**6.3.** Termination of Service. Except as may be set forth in the Participant's Award Agreement, vesting ceases on such date Participant's Service terminates (unless determined otherwise by the Committee).

**7. RESTRICTED STOCK AWARDS**. A Restricted Stock Award is an offer by the Company to sell to an eligible Employee, Consultant, or Director Shares that are subject to restrictions ("***Restricted Stock***"). The Committee will determine to whom an offer will be made, the number of Shares the Participant may purchase, the Purchase Price, the restrictions under which the Shares will be subject, and all other terms and conditions of the Restricted Stock Award, subject to the Plan.

**7.1.** Restricted Stock Purchase Agreement. All purchases under a Restricted Stock Award will be evidenced by an Award Agreement. Except as may otherwise be provided in an Award Agreement, a Participant accepts a Restricted Stock Award by signing and delivering to the Company an Award Agreement with full payment of the Purchase Price, within thirty (30) days from the date the Award Agreement was delivered to the Participant. If the Participant does not accept such Award within thirty (30) days, then the offer to purchase such Restricted Stock Award will terminate, unless the Committee determines otherwise.

**7.2.** Purchase Price. The Purchase Price for Shares issued pursuant to a Restricted Stock Award will be determined by the Committee and may be less than Fair Market Value on the date the Restricted Stock Award is granted. Payment of the Purchase Price must be made in accordance with Section 11 of the Plan, and the Award Agreement and in accordance with any procedures established by the Company.

**7.3.** Terms of Restricted Stock Awards. Restricted Stock Awards will be subject to such restrictions as the Committee may impose or are required by law. These restrictions may be based on completion of a specified period of Service with the Company or upon completion of Performance Factors, if any, during any Performance Period as set out in advance in the Participant's Award Agreement. Prior to the grant of a Restricted Stock Award, the Committee will: (a) determine the nature, length, and starting date of any Performance Period for the Restricted Stock Award; (b) select from among the Performance Factors to be used to measure performance goals, if any; and (c) determine the number of Shares that may be awarded to the Participant. Performance Periods may overlap and a Participant may participate simultaneously with respect to Restricted Stock Awards that are subject to different Performance Periods and having different performance goals and other criteria.

**7.4.** Termination of Service. Except as may be set forth in the Participant's Award Agreement, vesting ceases on such date Participant's Service terminates (unless determined otherwise by the Committee).

**8. STOCK BONUS AWARDS**. A Stock Bonus Award is an award to an eligible Employee, Consultant, or Director of Shares for Services to be rendered or for past Services already rendered to the Company or any Parent, Subsidiary, or Affiliate. All Stock Bonus Awards will be made pursuant to an Award Agreement. No payment from the Participant will be required for Shares awarded pursuant to a Stock Bonus Award.

**8.1.** Terms of Stock Bonus Awards. The Committee will determine the number of Shares to be awarded to the Participant under a Stock Bonus Award and any restrictions thereon. These restrictions may be based upon completion of a specified period of Service with the Company or upon satisfaction of performance goals based on Performance Factors during any Performance Period as set out in advance in the Participant's Stock Bonus Agreement. Prior to the grant of any Stock Bonus Award the Committee will: (a) determine the restrictions to which the Stock Bonus Award is subject, including the nature, length, and starting date of any Performance Period for the Stock Bonus Award; (b) select from among the Performance Factors, if any, to be used to measure performance goals; and (c) determine the number of Shares that may be awarded to the Participant. Performance Periods may overlap and a Participant may participate simultaneously with respect to Stock Bonus Awards that are subject to different Performance Periods and different performance goals and other criteria.

**8.2.** Form of Payment to Participant. Payment may be made in the form of cash, whole Shares, or a combination thereof, based on the Fair Market Value of the Shares earned under a Stock Bonus Award on the date of payment, as determined in the sole discretion of the Committee.

**8.3.** Termination of Service. Except as may be set forth in the Participant's Award Agreement, vesting ceases on such date Participant's Service terminates (unless determined otherwise by the Committee).

**9. STOCK APPRECIATION RIGHTS**. A Stock Appreciation Right ("***SAR***") is an award to an eligible Employee, Consultant, or Director that may be settled in cash or Shares (which may consist of Restricted Stock) having a value equal to (a) the difference between the Fair Market Value on the date of exercise over the Exercise Price multiplied by (b) the number of Shares with respect to which the SAR is being settled (subject to any maximum number of Shares that may be issuable as specified in an Award Agreement). All SARs will be made pursuant to an Award Agreement.

**9.1.** Terms of SARs. The Committee will determine the terms of each SAR including, without limitation: (a) the number of Shares subject to the SAR, (b) the Exercise Price and the time or times during which the SAR may be exercised and settled, (c) the consideration to be distributed on exercise and settlement of the SAR, and (d) the effect of the Participant's termination of Service on each SAR. The Exercise Price of the SAR will be determined by the Committee when the SAR is granted and may not be less than Fair Market Value of the Shares on the date of grant. A SAR may be awarded upon satisfaction of Performance Factors, if any, during any Performance Period as are set out in advance in the Participant's individual Award Agreement. If the SAR is being earned upon the satisfaction of Performance Factors, then the Committee will: (i) determine the nature, length, and starting date of any Performance Period for each SAR; and (ii) select from among the Performance Factors to be used to measure the performance, if any. Performance Periods may overlap and Participants may participate simultaneously with respect to SARs that are subject to different Performance Factors and other criteria.

**9.2.** Exercise Period and Expiration Date. A SAR will be exercisable within the times or upon the occurrence of events determined by the Committee and set forth in the Award Agreement governing such SAR. The SAR Agreement will set forth the expiration date, provided that no SAR will be exercisable after the expiration of ten (10) years from the date the SAR is granted. The Committee may also provide for SARs to become exercisable at one time or from time to time, periodically or otherwise (including, without limitation, upon the attainment during a Performance Period of performance goals based on Performance Factors), in such number of Shares or percentage of the Shares subject to the SAR as the Committee determines. Except as may be set forth in the Participant's Award Agreement, vesting ceases on the date Participant's Service terminates (unless determined otherwise by the Committee). Notwithstanding the foregoing, the rules of Section 5.6 also will apply to SARs.

**9.3.** Form of Settlement. Upon exercise of a SAR, a Participant will be entitled to receive payment from the Company in an amount determined by multiplying (a) the difference between the Fair Market Value of a Share on the date of exercise over the Exercise Price, by (b) the number of Shares with respect to which the SAR is exercised. At the discretion of the Committee, the payment from the Company for the SAR exercise may be in cash, in Shares of equivalent value, or in some combination thereof. The portion of a SAR being settled may be paid currently or on a deferred basis with such interest, if any, as the Committee determines, provided that the terms of the SAR and any deferral satisfy the requirements of Section 409A of the Code to the extent applicable.

**9.4.** Termination of Service. Except as may be set forth in the Participant's Award Agreement, vesting ceases on the date Participant's Service terminates (unless determined otherwise by the Committee).

**10. PERFORMANCE AWARDS**.

**10.1.** Types of Performance Awards. A Performance Award is an award to an eligible Employee, Consultant, or Director that is based upon the attainment of performance goals, as established by the Committee, and other terms and conditions specified by the Committee, and may be settled in cash, Shares (which may consist of, without limitation, Restricted Stock), other property, or any combination thereof. Grants of Performance Awards will be made pursuant to an Award Agreement that cites Section 10 of the Plan.

(a) Performance Shares. The Committee may grant Awards of Performance Shares, designate the Participants to whom Performance Shares are to be awarded, and determine the number of Performance Shares and the terms and conditions of each such Award. Performance Shares will consist of a unit valued by reference to a designated number of Shares, the value of which may be paid to the Participant by delivery of Shares or, if set forth in the instrument evidencing the Award, of such property as the Committee will determine, including, without limitation, cash, Shares, other property, or any combination thereof, upon the attainment of performance goals, as established by the Committee, and other terms and conditions specified by the Committee. The amount to be paid under an Award of Performance Shares may be adjusted on the basis of such further consideration as the Committee will determine in its sole discretion.

(b) Performance Units. The Committee may grant Awards of Performance Units, designate the Participants to whom Performance Units are to be awarded, and determine the number of Performance Units and the terms and conditions of each such Award. Performance Units will consist of a unit valued by reference to a designated amount of property other than Shares, which value may be paid to the Participant by delivery of such property as the Committee will determine, including, without limitation, cash, Shares, other property, or any combination thereof, upon the attainment of performance goals, as established by the Committee, and other terms and conditions specified by the Committee.

(c) Cash-Settled Performance Awards. The Committee may also grant cash-settled Performance Awards to Participants under the terms of this Plan. Such awards will be based on the attainment of performance goals using the Performance Factors within this Plan that are established by the Committee for the relevant performance period.

**10.2.** Terms of Performance Awards. The Committee will determine, and each Award Agreement will set forth, the terms of each Performance Award including, without limitation: (a) the amount of any cash bonus, (b) the number of Shares deemed subject to an award of Performance Shares, (c) the Performance Factors and Performance Period that will determine the time and extent to which each award of Performance Shares will be settled, (d) the consideration to be distributed on settlement, and (e) the effect of the Participant's termination of Service on each Performance Award. In establishing Performance Factors and the Performance Period the Committee will: (i) determine the nature, length, and starting date of any Performance Period; (ii) select from among the Performance Factors to be used; and (iii) determine the number of Shares deemed subject to the award of Performance Shares. Each Performance Share will have an initial value equal to the Fair Market Value of a Share on the date of grant. Prior to settlement the Committee will determine the extent to which Performance Awards have been earned. Performance Periods may overlap and Participants may participate simultaneously with respect to Performance Awards that are subject to different Performance Periods and different performance goals and other criteria.

**10.3.** Termination of Service. Except as may be set forth in the Participant's Award Agreement, vesting ceases on the date Participant's Service terminates (unless determined otherwise by the Committee).

**11. PAYMENT FOR SHARE PURCHASES**. Payment from a Participant for Shares purchased pursuant to this Plan may be made in cash or by check or, where expressly approved for the Participant by the Committee and where permitted by law (and to the extent not otherwise set forth in the applicable Award Agreement):

(a) by cancellation of indebtedness of the Company to the Participant;

(b) by surrender of shares of the Company held by the Participant that have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Award will be exercised or settled;

(c) by waiver of compensation due or accrued to the Participant for services rendered or to be rendered to the Company or a Parent or Subsidiary;

(d) by consideration received by the Company pursuant to a broker-assisted or other form of cashless exercise program implemented by the Company in connection with the Plan;

(e) by any combination of the foregoing; or

(f) by any other method of payment as is permitted by applicable law.

The Committee may limit the availability of any method of payment, to the extent the Committee determines, in its discretion, such limitation is necessary or advisable to comply with applicable law or facilitate the administration of the Plan.

**12. GRANTS TO NON-EMPLOYEE DIRECTORS**.

**12.1.** General. Non-Employee Directors are eligible to receive any type of Award offered under this Plan except ISOs. Awards pursuant to this Section 12 may be automatically made pursuant to policy adopted by the Board, or made from time to time as determined in the discretion of the Board. No Non-Employee Director may receive Awards under the Plan that, when combined with cash compensation received for service as a Non-Employee Director, exceed $750,000 in value (as described below) in any calendar year; provided, however, that a Non-Employee Director may receive up to $1,000,000 in value in his or her initial year of service as a Non-Employee Director. The value of Awards for purposes of complying with this maximum will be determined as follows: (a) for Options and SARs, grant date fair value will be calculated using the Company's regular valuation methodology for determining the grant date fair value of Options for reporting purposes, and (b) for all other Awards other than Options and SARs, grant date fair value will be determined by either (i) calculating the product of the Fair Market Value per Share on the date of grant and the aggregate number of Shares subject to the Award, or (ii) calculating the product using an average of the Fair Market Value over a number of trading days and the aggregate number of Shares subject to the Award as determined by the Committee. Awards granted to an individual while he or she was serving in the capacity as an Employee or while he or she was a Consultant but not a Non-Employee Director will not count for purposes of the limitations set forth in this Section 12.1.

**12.2.** Eligibility. Awards pursuant to this Section 12 will be granted only to Non-Employee Directors. A Non-Employee Director who is elected or re-elected as a member of the Board will be eligible to receive an Award under this Section 12.

**12.3.** Vesting, Exercisability and Settlement. Except as set forth in Section 21, Awards will vest, become exercisable, and be settled as determined by the Board. With respect to Options and SARs, the exercise price granted to Non-Employee Directors will not be less than the Fair Market Value of the Shares at the time that such Option or SAR is granted.

**12.4.** Election to Receive Awards in Lieu of Cash. A Non-Employee Director may elect to receive his or her annual retainer payments and/or meeting fees from the Company in the form of cash or Awards or a combination thereof, if permitted, and as determined, by the Committee. Such Awards will be issued under the Plan. An election under this Section 12.4 will be filed with the Company on the form prescribed by the Company.

**13. WITHHOLDING TAXES**.

**13.1.** Withholding Generally. Whenever Shares are to be issued in satisfaction of Awards granted under this Plan or a tax event occurs, the Company may require the Participant to remit to the Company, or to the Parent, Subsidiary, or Affiliate, as applicable, employing the Participant an amount sufficient to satisfy applicable U.S. federal, state, local, and international income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items (the "***Tax-Related Items***") legally due from the Participant prior to the delivery of Shares pursuant to exercise or settlement of any Award. Whenever payments in satisfaction of Awards granted under this Plan are to be made in cash, such payment will be net of an amount sufficient to satisfy applicable withholding obligations for Tax-Related Items. Unless otherwise determined by the Committee, the Fair Market Value of the Shares will be determined as of the date that the taxes are required to be withheld and such Shares will be valued based on the value of the actual trade or, if there is none, the Fair Market Value of the Shares as of the previous trading day.

**13.2.** Stock Withholding. The Committee, or its delegate(s), as permitted by applicable law, in its sole discretion and pursuant to such procedures as it may specify from time to time and to limitations of local law, may require or permit a Participant to satisfy such Tax Related Items legally due from the Participant, in whole or in part by (without limitation) (a) paying cash, (b) having the Company withhold otherwise deliverable cash or Shares having a Fair Market Value equal to the Tax-Related Items to be

withheld, (c) delivering to the Company already-owned shares having a Fair Market Value equal to the Tax-Related Items to be withheld, or (d) withholding from the proceeds of the sale of otherwise deliverable Shares acquired pursuant to an Award either through a voluntary sale or through a mandatory sale arranged by the Company. The Company may withhold or account for these Tax-Related Items by considering applicable statutory withholding rates or other applicable withholding rates, including up to the maximum permissible statutory tax rate for the applicable tax jurisdiction, to the extent consistent with applicable laws.

**14. TRANSFERABILITY**. Unless determined otherwise by the Committee, an Award may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution. If the Committee makes an Award transferable, including, without limitation, by instrument to an inter vivos or testamentary trust in which the Awards are to be passed to beneficiaries upon the death of the trustor (settlor) or by gift or by domestic relations order to a Permitted Transferee, such Award will contain such additional terms and conditions as the Committee deems appropriate. All Awards will be exercisable: (a) during the Participant's lifetime only by the Participant or the Participant's guardian or legal representative; (b) after the Participant's death, by the legal representative of the Participant's heirs or legatees; and (c) in the case of all awards except ISOs, by a Permitted Transferee.

**15. PRIVILEGES OF STOCK OWNERSHIP; RESTRICTIONS ON SHARES**.

**15.1.** Voting and Dividends. No Participant will have any of the rights of a stockholder with respect to any Shares until the Shares are issued to the Participant, except for any Dividend Equivalent Rights permitted by an applicable Award Agreement. Any Dividend Equivalent Rights will be subject to the same vesting or performance conditions as the underlying Award. In addition, the Committee may provide that any Dividend Equivalent Rights permitted by an applicable Award Agreement will be deemed to have been reinvested in additional Shares or otherwise reinvested. After Shares are issued to the Participant, the Participant will be a stockholder and have all the rights of a stockholder with respect to such Shares, including the right to vote and receive all dividends or other distributions made or paid with respect to such Shares; provided, that if such Shares are Restricted Stock, then any new, additional or different securities the Participant may become entitled to receive with respect to such Shares by virtue of a stock dividend, stock split or any other change in the corporate or capital structure of the Company will be subject to the same restrictions as the Restricted Stock; provided, further, that the Participant will have no right to such stock dividends or stock distributions with respect to Unvested Shares, and any such dividends or stock distributions will be accrued and paid only at such time, if any, as such Unvested Shares become vested Shares. The Committee, in its discretion, may provide in the Award Agreement evidencing any Award that the Participant will be entitled to Dividend Equivalent Rights with respect to the payment of cash dividends on Shares underlying an Award during the period beginning on the date the Award is granted and ending, with respect to each Share subject to the Award, on the earlier of the date on which the Award is exercised or settled or the date on which it is forfeited provided, that no Dividend Equivalent Right will be paid with respect to the Unvested Shares, and such dividends or stock distributions will be accrued and paid only at such time, if any, as such Unvested Shares become vested Shares. Such Dividend Equivalent Rights, if any, will be credited to the Participant in the form of additional whole Shares as of the date of payment of such cash dividends on Shares.

**15.2.** Restrictions on Shares. At the discretion of the Committee, the Company may reserve to itself and/or its assignee(s) a right to repurchase (a "***Right of Repurchase***") a portion of any or all Unvested Shares held by a Participant following such Participant's termination of Service at any time within ninety (90) days (or such longer or shorter time determined by the Committee) after the later of the date Participant's Service terminates and the date the Participant purchases Shares under this Plan, for cash and/or cancellation of purchase money indebtedness, at the Participant's Purchase Price or Exercise Price, as the case may be.

**16. CERTIFICATES**. All Shares or other securities whether or not certificated, delivered under this Plan will be subject to such stock transfer orders, legends, and other restrictions as the Committee may deem necessary or advisable, including restrictions under any applicable U.S. federal, state, or foreign securities law, or any rules, regulations, and other requirements of the SEC or any stock exchange or automated quotation system upon which the Shares may be listed or quoted, and any non-U.S. exchange controls or securities law restrictions to which the Shares are subject.

**17. ESCROW; PLEDGE OF SHARES**. To enforce any restrictions on a Participant's Shares, the Committee may require the Participant to deposit all certificates representing Shares, together with stock powers or other instruments of transfer approved by the Committee, appropriately endorsed in blank, with the Company or an agent designated by the Company to hold in escrow until such restrictions have lapsed or terminated, and the Committee may cause a legend or legends referencing such restrictions to be placed on the certificates. Any Participant who is permitted to execute a promissory note as partial or full consideration for the purchase of Shares under this Plan will be required to pledge and deposit with the Company all or part of the Shares so purchased as collateral to secure the payment of the Participant's obligation to the Company under the promissory note, provided, however, that the Committee may require or accept other or additional forms of collateral to secure the payment of such obligation and, in any event, the Company will have full recourse against the Participant under the promissory note notwithstanding any pledge of the Participant's Shares or other collateral. In connection with any pledge of the Shares, the Participant will be required to execute and deliver a written pledge agreement in such form as the Committee will from time to time approve. The Shares purchased with the promissory note may be released from the pledge on a pro rata basis as the promissory note is paid.

**18. REPRICING; EXCHANGE AND BUYOUT OF AWARDS**. Without prior stockholder approval the Committee may (a) reprice Options or SARs (and where such repricing is a reduction in the Exercise Price of outstanding Options or SARs, the consent of the affected Participants is not required provided written notice is provided to them, notwithstanding any adverse tax consequences to them arising from the repricing), and (b) with the consent of the respective Participants (unless not required pursuant to Section 5.9 of the Plan), pay cash or issue new Awards in exchange for the surrender and cancellation of any, or all, outstanding Awards.

**19. SECURITIES LAW AND OTHER REGULATORY COMPLIANCE**. An Award will not be effective unless such Award is in compliance with all applicable U.S. and foreign federal and state securities and exchange control and other laws, rules, and regulations of any governmental body, and the requirements of any stock exchange or automated quotation system upon which the Shares may then be listed or quoted, as they are in effect on the date of grant of the Award and also on the date of exercise or other issuance. Notwithstanding any other provision in this Plan, the Company will have no obligation to issue or deliver certificates for Shares under this Plan prior to: (a) obtaining any approvals from governmental agencies that the Company determines are necessary or advisable and/or (b) completion of any registration or other qualification of such Shares under any state, federal, or foreign law or ruling of any governmental body that the Company determines to be necessary or advisable. The Company will be under no obligation to register the Shares with the SEC or to effect compliance with the registration, qualification, or listing requirements of any foreign or state securities laws, exchange control laws, stock exchange, or automated quotation system, and the Company will have no liability for any inability or failure to do so.

**20. NO OBLIGATION TO EMPLOY**. Nothing in this Plan or any Award granted under this Plan will confer or be deemed to confer on any Participant any right to continue in the employ of, or to continue any other relationship with, the Company or any Parent, Subsidiary, or Affiliate or limit in any way the right of the Company or any Parent, Subsidiary, or Affiliate to terminate Participant's employment or other relationship at any time.

**21. CORPORATE TRANSACTIONS**.

**21.1.** Assumption or Replacement of Awards by Successor. In the event that the Company is subject to a Corporate Transaction, outstanding Awards acquired under the Plan shall be subject to the agreement evidencing the Corporate Transaction, which need not treat all outstanding Awards in an identical manner. Such agreement, without the Participant's consent, shall provide for one or more of the following with respect to all outstanding Awards as of the effective date of such Corporate Transaction:

(a) The continuation of an outstanding Award by the Company (if the Company is the successor entity).

(b) The assumption of an outstanding Award by the successor or acquiring entity (if any) of such Corporate Transaction (or by its parents, if any), which assumption, will be binding on all selected Participants; provided that the exercise price and the number and nature of shares issuable upon exercise of any such option or stock appreciation right, or any award that is subject to Section 409A of the Code, will be adjusted appropriately pursuant to Section 424(a) of the Code and/or Section 409A of the Code, as applicable.

(c) The substitution by the successor or acquiring entity in such Corporate Transaction (or by its parents, if any) of equivalent awards with substantially the same terms for such outstanding Awards (except that the exercise price and the number and nature of shares issuable upon exercise of any such option or stock appreciation right, or any award that is subject to Section 409A of the Code, will be adjusted appropriately pursuant to Section 424(a) of the Code and/or Section 409A of the Code, as applicable).

(d) The full or partial acceleration of exercisability or vesting and accelerated expiration of an outstanding Award and lapse of the Company's right to repurchase or re-acquire shares acquired under an Award or lapse of forfeiture rights with respect to shares acquired under an Award.

(e) The settlement of the full value of such outstanding Award (whether or not then vested or exercisable) in cash, cash equivalents, or securities of the successor entity (or its parent, if any) with a fair market value equal to the required amount, followed by the cancellation of such Awards; provided however, that such Award may be cancelled if such Award has no value, as determined by the Committee, in its discretion. Subject to Section 409A of the Code, such payment may be made in installments and may be deferred until the date or dates the Award would have become exercisable or vested. Such payment may be subject to vesting based on the Participant's continued service, provided that the vesting schedule shall not be less favorable to the Participant than the schedule under which the Award would have become vested or exercisable. For purposes of this Section 21.1(e), the fair market value of any security shall be determined without regard to any vesting conditions that may apply to such security.

(f) The cancellation of outstanding Awards in exchange for no consideration.

The Board shall have full power and authority to assign the Company's right to repurchase or re-acquire or forfeiture rights to such successor or acquiring corporation. In addition, in the event such successor or acquiring corporation (if any) refuses to assume, convert, replace or substitute Awards, as provided above, pursuant to a Corporate Transaction, the Committee will notify the Participant in writing or electronically that such Participant's Award will, if exercisable, be exercisable for a period of time determined by the Committee in its sole discretion, and such Award will terminate upon the expiration of such period. Awards need not be treated similarly in a Corporate Transaction and treatment may vary from Award to Award and/or from Participant to Participant.

**21.2.** Assumption of Awards by the Company. The Company, from time to time, also may substitute or assume outstanding awards granted by another company, whether in connection with an acquisition of such other company or otherwise, by either: (a) granting an Award under this Plan in substitution of such other company's award, or (b) assuming such award as if it had been granted under this Plan if the terms of such assumed award could be applied to an Award granted under this Plan. Such substitution or assumption will be permissible if the holder of the substituted or assumed award would have been eligible to be granted an Award under this Plan if the other company had applied the rules of this Plan to such grant. In the event the Company assumes an award granted by another company, the terms and conditions of such award will remain unchanged (except that the Purchase Price or the Exercise Price, as the case may be, and the number and nature of Shares issuable upon exercise or settlement of any such Award will be adjusted appropriately pursuant to Section 424(a) of the Code). In the event the Company elects to grant a new Option in substitution rather than assuming an existing option, such new Option may be granted with a similarly adjusted Exercise Price. Substitute Awards will not reduce the number of Shares authorized for grant under the Plan or authorized for grant to a Participant in a calendar year.

**21.3.** Non-Employee Directors' Awards. Notwithstanding any provision to the contrary herein, in the event of a Corporate Transaction, the vesting of all Awards granted to Non-Employee Directors will accelerate and such Awards will become exercisable (as applicable) in full prior to the consummation of such event at such times and on such conditions as the Committee determines.

**22. ADOPTION AND STOCKHOLDER APPROVAL**. This Plan will be submitted for the approval of the Company's stockholders, consistent with applicable laws, within twelve (12) months before or after the date this Plan is adopted by the Board.

**23. TERM OF PLAN/GOVERNING LAW**. Unless earlier terminated as provided herein, this Plan will become effective on the Effective Date and will terminate ten (10) years from the date this Plan is adopted by the Board. This Plan and all Awards granted hereunder will be governed by and construed in accordance with the laws of the State of Delaware (excluding its conflict of laws rules).

**24. AMENDMENT OR TERMINATION OF PLAN**. The Board may at any time terminate or amend this Plan in any respect, including, without limitation, amendment of any form of Award Agreement or instrument to be executed pursuant to this Plan, provided, however, that the Board will not, without the approval of the stockholders of the Company, amend this Plan in any manner that requires such stockholder approval, provided further that a Participant's Award will be governed by the version of this Plan then in effect at the time such Award was granted. No termination or amendment of the Plan will affect any then-outstanding Award unless expressly provided by the Committee. In any event, no termination or amendment of the Plan or any outstanding Award may adversely affect any then outstanding Award without the consent of the Participant, unless such termination or amendment is necessary to comply with applicable law, regulation, or rule.

**25. NONEXCLUSIVITY OF THE PLAN**. Neither the adoption of this Plan by the Board, the submission of this Plan to the stockholders of the Company for approval, nor any provision of this Plan will be construed as creating any limitations on the power of the Board to adopt such additional compensation arrangements as it may deem desirable, including, without limitation, the granting of stock awards and bonuses otherwise than under this Plan, and such arrangements may be either generally applicable or applicable only in specific cases.

**26. INSIDER TRADING POLICY**. Each Participant who receives an Award will comply with any policy adopted by the Company from time to time covering transactions in the Company's securities by Employees, officers, and/or Directors of the Company, as well as with any applicable insider trading or market abuse laws to which the Participant may be subject.

**27. ALL AWARDS SUBJECT TO COMPANY CLAWBACK OR RECOUPMENT POLICY**. All Awards, subject to applicable law, will be subject to clawback or recoupment pursuant to any compensation clawback or recoupment policy adopted by the Board or required by law during the term of Participant's employment or other service with the Company that is applicable to officers, Employees, Directors or other service providers of the Company, and in addition to any other remedies available under such policy and applicable law, may require the cancellation of outstanding Awards and the recoupment of any gains realized with respect to Awards.

**28. DEFINITIONS**. As used in this Plan, and except as elsewhere defined herein, the following terms will have the following meanings:

**28.1.** "***Affiliate***" means (a) any entity that, directly or indirectly, is controlled by, controls, or is under common control with, the Company, and (b) any entity in which the Company has a significant equity interest, in either case as determined by the Committee, whether now or hereafter existing.

**28.2.** "***Award***" means any award under the Plan, including any Option, Performance Award, Restricted Stock, Stock Bonus, Stock Appreciation Right, or Restricted Stock Unit.

**28.3.** "***Award Agreement***" means, with respect to each Award, the written or electronic agreement between the Company and the Participant setting forth the terms and conditions of the Award, and country-specific appendix thereto for grants to non-U.S. Participants, which will be in substantially a form (which need not be the same for each Participant) that the Committee (or in the case of Award agreements that are not used for Insiders, the Committee's delegate(s)) has from time to time approved, and will comply with and be subject to the terms and conditions of this Plan.

**28.4.** "***Board***" means the Board of Directors of the Company.

**28.5.** "Cause" means (i) an unauthorized use or disclosure by Participant of the Company's confidential information or trade secrets, which use or disclosure causes material harm to the Company or is reasonably likely to cause material harm to the Company, (ii) a material breach of any agreement between Participant and the Company, (iii) a material failure to comply with the Company's written policies or rules that has caused or is reasonably likely to cause material injury to the Company, its successor, or its affiliates, or any of their business, (iv) conviction of, or plea of "guilty" or "no contest" to, a felony under the laws of the United States or any state thereof, (v) willful misconduct that has caused or is reasonably likely to cause material injury to the Company, its successor, or its affiliates, or any of their business, (vi) embezzlement, (vii) failure to cooperate with the Company in any investigation or formal proceeding if the Company has requested Participant's reasonable cooperation, (viii) violation of any applicable federal, state or foreign statutes or laws that govern or regulate employment, pharmaceutical drugs or securities, including but not limited to the laws enforced by the federal Equal Employment Opportunity Commission, Department of Labor, Food and Drug Administration, Securities and Exchange Commission and Department of Justice or (ix) a continued failure to perform assigned duties after receiving written notification of such failure from the Company's Chief Executive Officer; provided that Participant must be provided with written notice of Participant's termination for "Cause" and Participant must be provided with a thirty (30) day period following Participant's receipt of such notice to cure the event(s) that trigger "Cause," with the Company's Chief Executive Officer making the final determination whether Participant has cured any Cause. The determination as to whether a Participant is being terminated for Cause shall be made in good faith by the

Company and shall be final and binding on the Participant. This definition does not in any way limit the Company's or any Parent's or Subsidiary's ability to terminate a Participant's employment or services at any time as provided in Section 20 above. Notwithstanding the foregoing, the foregoing definition of "Cause" may, in part or in whole, be modified or replaced in each individual employment agreement, Award Agreement, or other applicable agreement with any Participant, provided that such document explicitly supersedes the definition provided in this Section 28.5.

**28.6.** "***Code***" means the United States Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

**28.7.** "***Committee***" means the Compensation Committee of the Board or those persons to whom administration of the Plan, or part of the Plan, has been delegated as permitted by law.

**28.8.** "***Common Stock***" means the common stock of the Company.

**28.9.** "***Company***" means Day One Biopharmaceuticals, Inc., a Delaware corporation, or any successor corporation.

**28.10.** "***Consultant***" means any natural person, including an advisor or independent contractor, engaged by the Company or a Parent, Subsidiary, or Affiliate to render services to such entity.

**28.11.** "***Corporate Transaction***" means the occurrence of any of the following events: (a) any "Person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the total voting power represented by the Company's then-outstanding voting securities, provided, however, that for purposes of this subclause (a) the acquisition of additional securities by any one Person who is considered to own more than fifty percent (50%) of the total voting power of the securities of the Company will not be considered a Corporate Transaction; (b) the consummation of the sale or disposition by the Company of all or substantially all of the Company's assets; (c) the consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation; (d) any other transaction which qualifies as a "corporate transaction" under Section 424(a) of the Code wherein the stockholders of the Company give up all of their equity interest in the Company (except for the acquisition, sale or transfer of all or substantially all of the outstanding shares of capital stock of the Company), or (e) a change in the effective control of the Company that occurs on the date that a majority of members of the Board is replaced during any twelve (12) month period by members of the Board whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election. For purpose of this subclause (e), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Corporate Transaction. For purposes of this definition, Persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase, or acquisition of stock, or similar business transaction with the Company. Notwithstanding the foregoing, to the extent that any amount constituting deferred compensation (as defined in Section 409A of the Code) would become payable under this Plan by reason of a Corporate Transaction, such amount will become payable only if the event constituting a Corporate Transaction would also qualify as a change in ownership or effective control of the Company or a change in the ownership of a substantial portion of the assets of the Company, each as defined within the meaning of Code Section 409A, as it has been and may be amended from time to time, and any proposed or final Treasury Regulations and IRS guidance that has been promulgated or may be promulgated thereunder from time to time.

**28.12.** "***Director***" means a member of the Board.

**28.13.** "***Disability***" means in the case of incentive stock options, total and permanent disability as defined in Section 22(e)(3) of the Code and in the case of other Awards, that the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months.

**28.14.** "***Dividend Equivalent Right***" means the right of a Participant, granted at the discretion of the Committee or as otherwise provided by the Plan, to receive a credit for the account of such Participant in an amount equal to the cash, stock, or other property dividends in amounts equal equivalent to cash, stock, or other property dividends for each Share represented by an Award held by such Participant.

**28.15.** "***Effective Date***" means the day immediately prior to the Company's IPO Registration Date, subject to approval of the Plan by the Company's stockholders.

**28.16.** "***Employee***" means any person, including officers and Directors, providing services as an employee to the Company or any Parent, Subsidiary, or Affiliate. Neither service as a Director nor payment of a director's fee by the Company will be sufficient to constitute "employment" by the Company.

**28.17.** "***Exchange Act***" means the United States Securities Exchange Act of 1934, as amended.

**28.18.** "***Exchange Program***" means a program pursuant to which (a) outstanding Awards are surrendered, cancelled, or exchanged for cash, the same type of Award, or a different Award (or combination thereof); or (b) the exercise price of an outstanding Award is increased or reduced.

**28.19.** "***Exercise Price***" means, with respect to an Option, the price at which a holder may purchase the Shares issuable upon exercise of an Option and with respect to a SAR, the price at which the SAR is granted to the holder thereof.

**28.20.** "***Fair Market Value***" means, as of any date, the value of a Share, determined as follows:

(a) if such Common Stock is publicly traded and is then listed on a national securities exchange, its closing price on the date of determination on the principal national securities exchange on which the Common Stock is listed or admitted to trading as reported in *The Wall Street* Journal or such other source as the Committee deems reliable;

(b) if such Common Stock is publicly traded but is neither listed nor admitted to trading on a national securities exchange, the average of the closing bid and asked prices on the date of determination as reported in *The Wall Street Journal* or such other source as the Committee deems reliable;

(a) in the case of an Option or SAR grant made on the IPO Registration Date, the price per share at which Shares are initially offered for sale to the public by the Company's underwriters in the initial public offering of Shares as set forth in the Company's final prospectus included within the registration statement on Form S-1 filed with the SEC under the Securities Act; or

(c) by the Board or the Committee in good faith.

**28.21.** "***Insider***" means an officer or Director of the Company or any other person whose transactions in the Company's Common Stock are subject to Section 16 of the Exchange Act.

**28.22.** "***IPO Registration Date***" means the date on which the Company's registration statement on Form S-1 in connection with its initial public offering of common stock is declared effective by the SEC under the Securities Act.

**28.23.** "***IRS***" means the United States Internal Revenue Service.

**28.24.** "***Non-Employee Director***" means a Director who is not an Employee of the Company or any Parent, Subsidiary, or Affiliate.

**28.25.** "***Option***" means an award of an option to purchase Shares pursuant to Section 5.

**28.26.** "***Parent***" means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company if each of such corporations other than the Company owns stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

**28.27.** "***Participant***" means a person who holds an Award under this Plan.

**28.28.** "***Performance Award***" means an Award as defined in Section 10 and granted under the Plan, the payment of which is contingent upon achieving certain performance goals established by the Committee.

**28.29.** "***Performance Factors***" means any of the factors selected by the Committee and specified in an Award Agreement, from among the following measures, either individually, alternatively or in any combination, applied to the Company as a whole or any business unit or Subsidiary, either individually, alternatively, or in any combination, on a GAAP or non-GAAP basis, and measured, to the extent applicable on an absolute basis or relative to a pre-established target, to determine whether the performance goals established by the Committee with respect to applicable Awards have been satisfied:

(a) profit before tax;

(b) billings;

(c) revenue;

(d) net revenue;

(e) earnings (which may include earnings before interest and taxes, earnings before taxes, net earnings, stock-based compensation expenses, depreciation, and amortization);

(f) operating income;

(g) operating margin;

(h) operating profit;

(i) controllable operating profit or net operating profit;

(j) net profit;

(k) gross margin;

(l) operating expenses or operating expenses as a percentage of revenue;

(m) net income;

(n) earnings per share;

(o) total stockholder return;

(p) market share;

(q) return on assets or net assets;

(r) the Company's stock price;

(s) growth in stockholder value relative to a pre-determined index;

(t) return on equity;

(u) return on invested capital;

(v) cash flow (including free cash flow or operating cash flows);

(w) cash conversion cycle;

(x) economic value added;

(y) individual confidential business objectives;

(z) contract awards or backlog;

(aa) overhead or other expense reduction;

(bb) credit rating;

(cc) strategic plan development and implementation;

(dd) succession plan development and implementation;

(ee) improvement in workforce diversity;

(ff) customer indicators and/or satisfaction;

(gg) new product invention or innovation;

(hh) attainment of research and development milestones;

(ii) improvements in productivity;

(jj) bookings;

(kk) attainment of objective operating goals and employee metrics;

(ll) sales;

(mm) expenses;

(nn) balance of cash, cash equivalents, and marketable securities;

(oo) completion of an identified special project;

(pp) completion of a joint venture or other corporate transaction;

(qq) employee satisfaction and/or retention;

(rr) research and development expenses;

(ss) working capital targets and changes in working capital; and

(tt) any other metric that is capable of measurement as determined by the Committee.

The Committee may provide for one or more equitable adjustments to the Performance Factors to preserve the Committee's original intent regarding the Performance Factors at the time of the initial award grant, such as but not limited to, adjustments in recognition of unusual or non-recurring items such as acquisition related activities or changes in applicable accounting rules. It is within the sole discretion of the Committee to make or not make any such equitable adjustments.

**28.30.** "***Performance Period***" means one or more periods of time, which may be of varying and overlapping durations, as the Committee may select, over which the attainment of one or more Performance Factors will be measured for the purpose of determining a Participant's right to, and the payment of, a Performance Award.

**28.31.** "***Performance Share***" means an Award as defined in Section 10 and granted under the Plan, the payment of which is contingent upon achieving certain performance goals established by the Committee.

**28.32.** "***Performance Unit***" means an Award as defined in Section 10 and granted under the Plan, the payment of which is contingent upon achieving certain performance goals established by the Committee.

**28.33.** "***Permitted Transferee***" means any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law (including adoptive relationships) of the Employee, any person sharing the Employee's household (other than a tenant or employee), a trust in which these persons (or the Employee) have more than 50% of the beneficial interest, a foundation in which these persons (or the Employee) control the management of assets, and any other entity in which these persons (or the Employee) own more than 50% of the voting interests.

**28.34.** "***Plan***" means this Day One Biopharmaceuticals, Inc. 2021 Equity Incentive Plan.

**28.35.** "***Pre-Funded Warrant***" mean any warrant to acquire shares of Company common stock for a nominal exercise price.

**28.36.** "***Purchase Price***" means the price to be paid for Shares acquired under the Plan, other than Shares acquired upon exercise of an Option or SAR.

**28.37.** "***Restricted Stock Award***" means an Award as defined in Section 6 and granted under the Plan, or issued pursuant to the early exercise of an Option.

**28.38.** "***Restricted Stock Unit***" means an Award as defined in Section 9 and granted under the Plan.

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

**28.40.** "***Securities Act***" means the United States Securities Act of 1933, as amended.

**28.41.** "***Service***" will mean service as an Employee, Consultant, Director, or Non-Employee Director, to the Company or a Parent, Subsidiary, or Affiliate, subject to such further limitations as may be set forth in the Plan or the applicable Award Agreement. An Employee will not be deemed to have ceased to provide Service in the case of any leave of absence approved by the Company. In the case of any Employee on an approved leave of absence or a reduction in hours worked (for illustrative purposes only, a change in schedule from that of full-time to part-time), the Committee may make such provisions respecting suspension of or modification to vesting of the Award while on leave from the employ of the Company or a Parent, Subsidiary or Affiliate or during such change in working hours as it may deem appropriate, except that in no event may an Award be exercised after the expiration of the term set forth in the applicable Award Agreement. In the event of military or other protected leave, if required by applicable laws, vesting will continue for the longest period that vesting continues under any other statutory or Company approved leave of absence and, upon a Participant's returning from military leave, he or she will be given vesting credit with respect to Awards to the same extent as would have applied had the Participant continued to provide Service to the Company throughout the leave on the same terms as he or she was providing Service immediately prior to such leave. An employee shall have terminated employment as of the date he or she ceases to provide Service (regardless of whether the termination is in breach of local employment laws or is later found to be invalid) and employment shall not be extended by any notice period or garden leave mandated by local law, *provided*, *however*, that a change in status between an Employee, Consultant, Director or Non-Employee Director shall not terminate the Participant's Service, unless determined by the Committee, in its discretion or to the extent set forth in the applicable Award Agreement. The Committee will have sole discretion to determine whether a Participant has ceased to provide Service and the effective date on which the Participant ceased to provide Service. An employee will have terminated employment as of the date he or she ceases to provide Service (regardless of whether the termination is in breach of local employment laws or is later found to be invalid) and employment will not be extended by any notice period or garden leave mandated by local law, provided, however, that a change in status from an Employee to a Consultant or Non-Employee Director (or vice versa) will not terminate the Participant's Service, unless determined by the Committee, in its discretion. The Committee will have sole discretion to determine whether a Participant has ceased to provide Service and the effective date on which the Participant ceased to provide Service.

**28.42.** "***Shares***" means shares of the Common Stock and the common stock of any successor entity of the Company.

**28.43.** "***Stock Appreciation Right***" means an Award defined in Section 8 and granted under the Plan.

**28.44.** "***Stock Bonus***" means an Award defined in Section 7 and granted under the Plan.

**28.45.** "***Subsidiary***" means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company if each of the corporations other than the last corporation in the unbroken chain owns stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

**28.46.** "***Treasury Regulations***" means regulations promulgated by the United States Treasury Department.

**28.47.** "***Unvested Shares***" means Shares that have not yet vested or are subject to a right of repurchase in favor of the Company (or any successor thereto).

**DAY ONE BIOPHARMACEUTICALS, INC.**
**2021 EQUITY INCENTIVE PLAN**
**NOTICE OF STOCK OPTION GRANT**

You (the "***Optionee***") have been granted an option to purchase shares of Common Stock of the Company (the "***Option***") under the Day One Biopharmaceuticals, Inc. (the "***Company***") 2021 Equity Incentive Plan (the "***Plan***") subject to the terms and conditions of the Plan, this Notice of Stock Option Grant (this "***Notice***")., and the Stock Option Agreement (the "***Option Agreement***").

Unless otherwise defined herein, the terms defined in the Plan will have the same meanings in this Notice and the electronic representation of this Notice established and maintained by the Company or a third party designated by the Company.

**Name**:

**Address**:

**Grant Number**:

**Date of Grant**:

**Vesting Commencement Date**:

**Exercise Price per Share**:

**Total Number of Shares**:

**Type of Option**: _____ Non-Qualified Stock Option

_____ Incentive Stock Option

**Expiration Date**: _____ __, 20__; the Option expires earlier if Optionee's Service terminates earlier, as described in the Option Agreement.

**Vesting Schedule**: Subject to the limitations set forth in this Notice, the Plan, and the Agreement, the Option will vest in accordance with the following schedule: [*insert applicable vesting schedule, which may include performance metrics*]

By accepting (whether in writing, electronically, or otherwise) the Option, Optionee acknowledges and agrees to the following:

1) Optionee understands that Optionee's Service is for an unspecified duration, can be terminated at any time (*i.e.*, is "at-will") except where otherwise prohibited by applicable law, and that nothing in this Notice, the Option Agreement, or the Plan changes the nature of that relationship. Optionee acknowledges that the vesting of the Option pursuant to this Notice is subject to Optionee's continuing Service. Optionee agrees and acknowledges that the Vesting Schedule may change prospectively in the event that Optionee's Service status changes between full- and part-time and/or in the event the Optionee is on a leave of absence, in accordance with Company policies relating to work schedules and vesting of Awards or as determined by the Committee.

2) This grant is made under and governed by the Plan, the Agreement, and this Notice, and this Notice is subject to the terms and conditions of the Agreement and the Plan, both of which are incorporated herein by reference. Optionee has read the Notice, the Option Agreement and, the Plan.

3) Optionee has read the Company's Insider Trading Policy, and agrees to comply with such policy, as it may be amended from time to time, whenever Optionee acquires or disposes of the Company's securities.

4) By accepting the Option, Optionee consents to electronic delivery and participation as set forth in the Option Agreement.

| **OPTIONEE** | **DAY ONE BIOPHARMACEUTICALS, INC.** |
| --- | --- |
| Signature: _____ | By: _____ |
| Print Name: _____ | Its: _____ |

**DAY ONE BIOPHARMACEUTICALS, INC.**
**2021 EQUITY INCENTIVE PLAN**
**STOCK OPTION AGREEMENT**

Unless otherwise defined in this Stock Option Agreement (this "***Option Agreement***"), any capitalized terms used herein will have the same meaning ascribed to them in the Day One Biopharmaceuticals, Inc. 2021 Equity Incentive Plan (the "***Plan***").

Optionee has been granted an option to purchase Shares (the "***Option***") of Day One Biopharmaceuticals, Inc. (the "***Company***"), subject to the terms, restrictions, and conditions of the Plan, the Notice of Stock Option Grant (the "***Notice***"), and this Option Agreement. In the event of a conflict between the terms and conditions of the Plan and the terms and conditions of the Notice or this Option Agreement, the terms and conditions of the Plan will prevail.

**1. Vesting.** Subject to the applicable provisions of the Plan and this Option Agreement, the Option may be exercised, in whole or in part, in accordance with the Vesting Schedule set forth in the Notice. Optionee acknowledges and agrees that the Vesting Schedule may change prospectively in the event Optionee's Service status changes between full and part-time and/or in the event Optionee is on a leave of absence, in accordance with Company policies relating to work schedules and vesting of Awards or as determined by the Committee. Optionee acknowledges that the vesting of the Option pursuant to this Notice and Agreement is subject to Optionee's continuing Service.

**2. Grant of Option.** Optionee has been granted an Option for the number of Shares set forth in the Notice at the exercise price per Share in U.S. Dollars set forth in the Notice (the "***Exercise Price***"). If designated in the Notice as an Incentive Stock Option ("***ISO***"), the Option is intended to qualify as an Incentive Stock Option under Section 422 of the Code. However, if the Option is intended to be an ISO, to the extent that it exceeds the U.S. $100,000 rule of Code Section 422(d) it will be treated as a Nonqualified Stock Option ("***NSO***").

**3. Termination Period.**

(a) General Rule. If Optionee's Service terminates for any reason except death or Disability, and other than for Cause, then the Option will expire at the close of business at Company headquarters on the date three (3) months after Optionee's Termination Date (as defined below) (with any exercise beyond three (3) months after the date Optionee's employment terminates deemed to be the exercise of an NSO). The Company determines when Optionee's Service terminates for all purposes under this Option Agreement.

(b) Death; Disability. If Optionee dies before Optionee's Service terminates (or Optionee dies within three (3) months of Optionee's termination of Service other than for Cause), then the Option will expire at the close of business at Company headquarters on the date twelve (12) months after the date of death (subject to the expiration details in Section 7). If Optionee's Service terminates because of Optionee's Disability, then the Option will expire at the close of business at Company headquarters on the date twelve (12) months after Optionee's Termination Date (subject to the expiration details in Section 7).

(c) Cause. Unless otherwise determined by the Committee, the Option (whether or not vested) will terminate immediately upon the Optionee's cessation of Services if the Company reasonably determines in good faith that such cessation of Services has resulted in connection with an act or failure to act constituting Cause (or the Optionee's Services could have been terminated for Cause (without regard to the lapsing of any required notice or cure periods in connection therewith) at the time the Optionee terminated Services).

(d) No Notification of Exercise Periods. Optionee is responsible for keeping track of these exercise periods following Optionee's termination of Service for any reason. The Company will not provide further notice of such periods. In no event will the Option be exercised later than the Expiration Date set forth in the Notice.

(e) Termination. For purposes of this Option, Optionee's Service will be considered terminated as of the date Optionee is no longer providing Service to the Company, its Parent or one of its Subsidiaries or Affiliates (regardless of the reason for such termination and whether or not later found to be invalid or in breach of employment laws in the jurisdiction where Optionee is employed or the terms of Optionee's employment agreement, if any) (the "***Termination Date***"). The Committee will have the exclusive discretion to determine when Optionee is no longer actively providing services for purposes of Optionee's Option (including whether Optionee may still be considered to be providing services while on an approved leave of absence). Unless otherwise provided in this Option Agreement or determined by the Company, Optionee's right to vest in this Option under the Plan, if any, will terminate as of the Termination Date and will not be extended by any notice period (*e.g.*, Optionee's period of Service would not include any contractual notice period or any period of "garden leave" or similar period mandated under employment laws in the jurisdiction where Optionee is employed or the terms of Optionee's employment agreement, if any). Following the Termination Date, Optionee may exercise the Option only as set forth in the Notice and this Section, provided that the period (if any) during which Optionee may exercise the Option after the Termination Date, if any, will commence on the date Optionee ceases to provide services and will not be extended by any notice period mandated under employment laws in the jurisdiction where Optionee is employed or terms of Optionee's employment agreement, if any. If Optionee does not exercise this Option within the termination period set forth in the Notice or the termination periods set forth above, the Option will terminate in its entirety. In no event, may any Option be exercised after the Expiration Date of the Option as set forth in the Notice.

**4. Exercise of Option.**

(a) Right to Exercise. The Option is exercisable during its term in accordance with the Vesting Schedule set forth in the Notice and the applicable provisions of the Plan and this Option Agreement. In the event of Optionee's death, Disability, termination for Cause, or other cessation of Service, the exercisability of the Option is governed by the applicable provisions of the Plan, the Notice, and this Option Agreement. The Option may not be exercised for a fraction of a Share.

(b) Method of Exercise. The Option is exercisable by delivery of an exercise notice in a form specified by the Company (the "***Exercise Notice***"), which will state the election to exercise the Option, the number of Shares in respect of which the Option is being exercised (the "***Exercised Shares***"), and such other representations and agreements as may be required by the Company pursuant to the provisions of the Plan. The Exercise Notice will be delivered in person, by mail, via electronic mail or facsimile or by other authorized method to the Secretary of the Company or other person designated by the Company. The Exercise Notice will be accompanied by payment of the aggregate Exercise Price as to all Exercised Shares together with any applicable Tax-Related Items (as defined in Section 8 below). The Option will be deemed to be exercised upon receipt by the Company of such fully executed Exercise Notice accompanied by such aggregate Exercise Price and payment of any applicable Tax-Related Items. No Shares will be issued pursuant to the exercise of the Option unless such issuance and exercise complies with all relevant provisions of law and the requirements of any stock exchange or quotation service upon which the Shares are then listed. Assuming such compliance, for United States income tax purposes the Exercised Shares will be considered transferred to Optionee on the date the Option is exercised with respect to such Exercised Shares.

(c) Exercise by Another. If another person wants to exercise the Option after it has been transferred to him or her in compliance with this Option Agreement, that person must prove to the Company's satisfaction that he or she is entitled to exercise the Option. That person must also complete the proper Exercise Notice form (as described above) and pay the Exercise Price (as described below) and any applicable Tax-Related Items (as described below).

**5. Method of Payment.** Payment of the aggregate Exercise Price will be by any of the following, or a combination thereof, at the election of Optionee:

(a) Optionee's personal check (or readily available funds), wire transfer, or a cashier's check;

(b) certificates for shares of Company stock that Optionee owns, along with any forms needed to effect a transfer of those shares to the Company; the value of the shares, determined as of the effective date of the Option exercise, will be applied to the Exercise Price. Instead of surrendering shares of Company stock, Optionee may attest to the ownership of those shares on a form provided by the Company and have the same number of shares subtracted from the Option shares issued to Optionee. However, Optionee may not surrender, or attest to the ownership of, shares of Company stock in payment of the Exercise Price of Optionee's Option if Optionee's action would cause the Company to recognize compensation expense (or additional compensation expense) with respect to this Option for financial reporting purposes;

(c) cashless exercise through irrevocable directions to a securities broker approved by the Company to sell all or part of the Shares covered by the Option and to deliver to the Company from the sale proceeds an amount sufficient to pay the Exercise Price and any applicable Tax-Related Items. The balance of the sale proceeds, if any, will be delivered to Optionee. The directions must be given by signing a special notice of exercise form provided by the Company; or

(d) any other method authorized by the Company;

provided, however, that the Company may restrict the available methods of payment to facilitate compliance with applicable law or administration of the Plan.

**6. Non-Transferability of Option.** In general, except as provided below, only Optionee may exercise this Option prior to Optionee's death. Optionee may not transfer or assign this Option, except as provided below. For instance, Optionee may not sell this Option or use it as security for a loan. If Optionee attempts to do any of these things, this Option will immediately become invalid. However, if Optionee is a U.S. taxpayer, Optionee may dispose of this Option in Optionee's will. If Optionee is a U.S. taxpayer and this Option is designated as a NSO in the Notice of Grant, then the Committee may, in its sole discretion, allow Optionee to transfer this Option as a gift to one or more family members. For purposes of this Agreement, "family member" means a child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in- law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law (including adoptive relationships), any individual sharing Optionee's household (other than a tenant or employee), a trust in which one or more of these individuals have more than 50% of the beneficial interest, a foundation in which Optionee or one or more of these persons control the management of assets, and any entity in which Optionee or one or more of these persons own more than 50% of the voting interest. In addition, if Optionee is a U.S. taxpayer and this Option is designated as a NSO in the Notice of Grant, then the Committee may, in its sole discretion, allow Optionee to transfer this Option to Optionee's spouse or former spouse pursuant to a domestic relations order in settlement of marital property rights. The Committee will allow Optionee to transfer this Option only if both Optionee and the transferee(s) execute the forms prescribed by the Committee, which include the consent of the transferee(s) to be bound by this Agreement. This Option may not be transferred in any manner other than by will or by the laws of descent or distribution or court order and may be exercised during Optionee's lifetime only by Optionee, Optionee's guardian, or legal representative, as permitted in the Plan and applicable local laws. The terms of the Plan and this Agreement shall be binding upon the executors, administrators, heirs, successors and assigns of Optionee.

**7. Term of Option.** The Option will in any event expire on the expiration date set forth in the Notice, which date is no more than ten (10) years after the Date of Grant (five (5) years after the Date of Grant if this option is designated as an ISO in the Notice of Stock Option Grant and Section 5.3 of the Plan applies).

**8. Taxes.**

(a) Responsibility for Taxes. Optionee acknowledges that, regardless of any action taken by the Company or, if different, a Parent, Subsidiary, or Affiliate employing or retaining Optionee (the "***Employer***"), the ultimate liability for all income tax, social insurance, payroll tax, fringe benefits tax, payment on account, or other tax related items related to Optionee's participation in the Plan and legally applicable to Optionee ("***Tax-Related Items***") is and remains Optionee's responsibility and may exceed the amount actually withheld by the Company or the Employer, if any. Optionee further acknowledges that the Company and/or the Employer (i) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of this Option, including, but not limited to, the grant, vesting, or exercise of this Option; the subsequent sale of Shares acquired pursuant to such exercise; and the receipt of any dividends; and (ii) do not commit to and are under no obligation to structure the terms of the grant or any aspect of this Option to reduce or eliminate Optionee's liability for Tax-Related Items or achieve any particular tax result. Further, if Optionee is subject to Tax-Related Items in more than one jurisdiction, Optionee acknowledges that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction. *OPTIONEE SHOULD CONSULT A TAX ADVISER APPROPRIATELY QUALIFIED IN THE COUNTRY OR COUNTRIES IN WHICH OPTIONEE RESIDES OR IS SUBJECT TO TAXATION.*

(b) Withholding. Prior to any relevant taxable or tax withholding event, as applicable, Optionee agrees to make arrangements satisfactory to the Company and/or the Employer to satisfy all Tax-Related Items. In this regard, Optionee authorizes the Company and/or the Employer, or their respective agents, at their discretion, to satisfy any withholding obligations for Tax-Related Items by one or a combination of the following, all under such rules as may be established by the Committee and in compliance with the Company's Insider Trading Policy and 10b5-1 Trading Plan Policy, if applicable:

(i) withholding from Optionee's wages or other cash compensation paid to Optionee by the Company and/or the Employer; or

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

(iii) withholding Shares to be issued upon exercise of the Option, provided the Company only withholds the number of Shares necessary to satisfy no more than applicable statutory withholding amounts;

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

(v) any other arrangement approved by the Committee and permitted under applicable law;

provided, however, that if Optionee is a Section 16 officer of the Company under the Exchange Act, then the method of withholding shall be a mandatory sale (unless the Committee as constituted in accordance with Rule 16b-3 of the Exchange Act shall establish an alternate method from alternatives (i) – (v) above prior to the Tax-Related Items withholding event).

Depending on the withholding method, the Company may withhold or account for Tax-Related Items by considering applicable statutory withholding rates or other applicable withholding rates, including up to the maximum permissible statutory rate for Optionee's tax jurisdiction(s) in which case Optionee will have no entitlement to the equivalent amount in Shares and will receive a refund of any over-withheld amount in cash in accordance with applicable law. If the obligation for Tax-Related Items is satisfied by withholding in Shares, for tax purposes, Optionee is deemed to have been issued the full number of Exercised Shares; notwithstanding that a number of the Shares are held back solely for the purpose of satisfying the withholding obligation for Tax-Related Items.

Finally, Optionee agrees to pay to the Company and/or the Employer any amount of Tax-Related Items that the Company and/or the Employer may be required to withhold or account for as a result of Optionee's participation in the Plan that cannot be satisfied by the means previously described. The Company may refuse to issue or deliver the Shares or the proceeds of the sale of Shares, if Optionee fails to comply with Optionee's obligations in connection with the Tax-Related Items.

(c) Notice of Disqualifying Disposition of ISO Shares. If Optionee is subject to Tax-Related Items in the United States and sells or otherwise disposes of any of the Shares acquired pursuant to an ISO on or before the later of (i) two (2) years after the grant date, or (ii) one (1) year after the exercise date, Optionee will immediately notify the Company in writing of such disposition. Optionee agrees that he or she may be subject to income tax withholding by the Company on the compensation income recognized from such early disposition of ISO Shares by payment in cash or out any wages or other cash compensation paid to Optionee by the Company and/or the Employer.

**9. Nature of Grant.** By accepting the Option, Optionee acknowledges, understands and agrees that:

(a) the Plan is established voluntarily by the Company, it is discretionary in nature, and it may be modified, amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan;

(b) the grant of the Option is exceptional, voluntary, and occasional, and does not create any contractual or other right to receive future grants of options, or benefits in lieu of options, even if options have been granted in the past;

(c) all decisions with respect to future options or other grants, if any, will be at the sole discretion of the Company;

(d) Optionee is voluntarily participating in the Plan;

(e) the Option and Optionee's participation in the Plan will not create a right to employment or be interpreted as forming or amending an employment or service contract with the Company or the Employer, and will not interfere with the ability of the Company or the Employer, as applicable, to terminate Optionee's employment or service relationship (if any);

(f) the Option and the Shares subject to the Option, and the income and value of same, are not intended to replace any pension rights or compensation;

(g) the Option and the Shares subject to the Option, and the income and value of same, are not part of normal or expected compensation for any purpose, including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, long-service awards, pension or retirement, or welfare benefits or similar payments;

(h) unless otherwise agreed with the Company, the Option, and the Shares subject to the Option, and the income and value of same, are not granted as consideration for, or in connection with, the service Optionee may provide as a director of a Parent, Subsidiary, or Affiliate;

(i) the future value of the Shares underlying the Option is unknown, indeterminable, and cannot be predicted with certainty; if the underlying Shares do not increase in value, the Option will have no value; if Optionee exercises the Option and acquires Shares, the value of such Shares may increase or decrease, even below the Exercise Price;

(j) no claim or entitlement to compensation or damages will arise from forfeiture of the Option resulting from Optionee's termination of Service (regardless of the reason for such termination and whether or not later found to be invalid or in breach of employment laws in the jurisdiction where Optionee is employed or the terms of Optionee's employment agreement, if any), and in consideration of the grant of the Option to which Optionee is otherwise not entitled, Optionee irrevocably agrees never to institute any claim against the Employer, the Company, and any Parent, Subsidiary, or Affiliate; waives his or her ability, if any, to bring any such claim; and releases the Employer, the Company, and any Parent, Subsidiary, or Affiliate from any such claim; if, notwithstanding the foregoing, any such claim is allowed by a court of competent jurisdiction, then, by participating in the Plan, Optionee will be deemed irrevocably to have agreed not to pursue such claim and agrees to execute any and all documents necessary to request dismissal or withdrawal of such claim;

(k) unless otherwise provided in the Plan or by the Company in its discretion, the Option and the benefits evidenced by this Option Agreement do not create any entitlement to have the Option or any such benefits transferred to, or assumed by, another company nor to be exchanged, cashed out or substituted for, in connection with any Corporate Transaction affecting the Shares; and

(l) neither the Employer, the Company, or any Parent, Subsidiary or Affiliate will be liable for any foreign exchange rate fluctuation between Optionee's local currency and the United States Dollar that may affect the value of the Option or of any amounts due to Optionee pursuant to the exercise of the Option or the subsequent sale of any Shares acquired upon exercise.

(m) the following provisions apply only if Optionee is providing services outside the United States:

(i) the Option and the Shares subject to the Option are not part of normal or expected compensation or salary for any purpose; and

(ii) Optionee acknowledges and agrees that neither the Company, the Employer nor any Parent or Subsidiary or Affiliate will be liable for any foreign exchange rate fluctuation between Optionee's local currency and the United States Dollar that may affect the value of the Option or of any amounts due to Optionee pursuant to the exercise of the Option or the subsequent sale of any Shares acquired upon exercised

**10. No Advice Regarding Grant.** The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding Optionee's participation in the Plan or Optionee's acquisition or sale of the underlying Shares. Optionee acknowledges, understands, and agrees that he or she should consult with his or her own personal tax, legal, and financial advisors regarding his or her participation in the Plan before taking any action related to the Plan.

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

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

**13. Acknowledgement.** The Company and Optionee agree that the Option is granted under and governed by the Notice, this Option Agreement and the Plan (incorporated herein by reference). Optionee: (a) acknowledges receipt of a copy of the Plan and the Plan prospectus, (b) represents that Optionee has carefully read and is familiar with their provisions, and (c) hereby accepts the Option subject to all of the terms and conditions set forth herein and those set forth in the Plan and the Notice.

**14. Entire Agreement; Enforcement of Rights.** This Option Agreement, the Plan, and the Notice constitute the entire agreement and understanding of the parties relating to the subject matter herein and supersede all prior discussions between them. Any prior agreements, commitments, or negotiations concerning the purchase of the Shares hereunder are superseded. No adverse modification of, or adverse amendment to, this Option Agreement, nor any waiver of any rights under this Option Agreement, will be effective unless in writing and signed by the parties to this Option Agreement (which writing and signing may be electronic). The failure by either party to enforce any rights under this Option Agreement will not be construed as a waiver of any rights of such party.

**15. Compliance with Laws and Regulations.** The issuance of Shares and the sale of Shares will be subject to and conditioned upon compliance by the Company and Optionee with all applicable state, federal, local and foreign laws and regulations and with all applicable requirements of any stock exchange or automated quotation system on which the Company's Shares may be listed or quoted at the time of such issuance or transfer. Optionee understands that the Company is under no obligation to register or qualify the Common Stock with any state, federal, or foreign securities commission or to seek approval or clearance from any governmental authority for the issuance or sale of the Shares. Further, Optionee agrees that the Company will have unilateral authority to amend the Plan and this Option Agreement without Optionee's consent to the extent necessary to comply with securities or other laws applicable to issuance of Shares. Finally, the Shares issued pursuant to this Option Agreement will be endorsed with appropriate legends, if any, determined by the Company.

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

**17. Governing Law and Venue.** This Option Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto will be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to such state's conflict of laws rules.

Any and all disputes relating to, concerning or arising from this Option Agreement, or relating to, concerning or arising from the relationship between the parties evidenced by the Plan or this Option Agreement, will be brought and heard exclusively in the United States District Court for the State of California or the Superior Court, San Francisco County, California. Each of the parties hereby represents and agrees that such party is subject to the personal jurisdiction of said courts; hereby irrevocably consents to the jurisdiction of such courts in any legal or equitable proceedings related to, concerning, or arising from such dispute, and waives, to the fullest extent permitted by law, any objection which such party may now or hereafter have that the laying of the venue of any legal or equitable proceedings related to, concerning, or arising from such dispute which is brought in such courts is improper or that such proceedings have been brought in an inconvenient forum.

**18. No Rights as Employee, Director or Consultant.** Nothing in this Option Agreement will affect in any manner whatsoever any right or power of the Employer or the Company to terminate Optionee's Service, for any reason, with or without Cause.

**19. Lock-Up Agreement**. In connection with the initial public offering of the Company's securities and upon request of the Company or the underwriters managing any underwritten offering of the Company's securities, Optionee hereby agrees not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company however and whenever acquired (other than those included in the registration), except pursuant to a transfer for no consideration in accordance with Section 6 above, without the prior written consent of the Company or such underwriters, as the case may be, for such period of time (not to exceed one hundred eighty (180) days) from the effective date of such registration as may be requested by the Company or such managing underwriters and to execute

an agreement reflecting the foregoing as may be requested by the underwriters at the time of the public offering; provided however that, if during the last seventeen (17) days of the restricted period the Company issues an earnings release or material news or a material event relating to the Company occurs, or prior to the expiration of the restricted period the Company announces that it will release earnings results during the sixteen (16)-day period beginning on the last day of the restricted period, then, upon the request of the managing underwriter, to the extent required by any Financial Industry Regulatory Authority rules, the restrictions imposed by this Section shall continue to apply until the end of the third trading day following the expiration of the fifteen (15)-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event. In no event will the restricted period extend beyond two hundred sixteen (216) days after the effective date of the registration statement.

**20. Consent to Electronic Delivery of All Plan Documents and Disclosures.** By Optionee's acceptance of the Notice (whether in writing or electronically), Optionee and the Company agree that the Option is granted under and governed by the terms and conditions of the Plan, the Notice, and this Option Agreement. Optionee has reviewed the Plan, the Notice, and this Option Agreement in their entirety, has had an opportunity to obtain the advice of counsel prior to executing the Notice and Agreement, and fully understands all provisions of the Plan, the Notice, and this Option Agreement. Optionee hereby agrees to accept as binding, conclusive, and final all decisions or interpretations of the Committee upon any questions relating to the Plan, the Notice, and this Option Agreement. Optionee further agrees to notify the Company upon any change in Optionee's residence address. By acceptance of the Option, Optionee agrees to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company and consents to the electronic delivery of the Notice, this Option Agreement, the Plan, account statements, Plan prospectuses required by the U.S. Securities and Exchange Commission, U.S. financial reports of the Company, and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements), or other communications or information related to the Option and current or future participation in the Plan. Electronic delivery may include the delivery of a link to the Company intranet or the internet site of a third party involved in administering the Plan, the delivery of the document via e-mail, or such other delivery determined at the Company's discretion. Optionee acknowledges that Optionee may receive from the Company a paper copy of any documents delivered electronically at no cost if Optionee contacts the Company by telephone, through a postal service, or electronic mail to Stock Administration. Optionee further acknowledges that Optionee will be provided with a paper copy of any documents delivered electronically if electronic delivery fails; similarly, Optionee understands that Optionee must provide on request to the Company or any designated third party a paper copy of any documents delivered electronically if electronic delivery fails. Also, Optionee understands that Optionee's consent may be revoked or changed, including any change in the electronic mail address to which documents are delivered (if Optionee has provided an electronic mail address), at any time by notifying the Company of such revised or revoked consent by telephone, postal service, or electronic mail to Stock Administration. Finally, Optionee understands that Optionee is not required to consent to electronic delivery if local laws prohibit such consent.

**21. Insider Trading Restrictions/Market Abuse Laws.** Optionee acknowledges that, depending on Optionee's country, Optionee may be subject to insider trading restrictions and/or market abuse laws, which may affect Optionee's ability to acquire or sell the Shares or rights to Shares under the Plan during such times as Optionee is considered to have "inside information" regarding the Company (as defined by the laws in Optionee's country). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. Optionee acknowledges that it is Optionee's responsibility to comply with any applicable restrictions and understands that Optionee should consult his or her personal legal advisor on such matters. In addition, Optionee acknowledges that he or she has read the Company's Insider Trading Policy, and agrees to comply with such policy, as it may be amended from time to time, whenever Optionee acquires or disposes of the Company's securities.

**22. <u>Award Subject to Company Clawback or Recoupment</u>.** To the extent permitted by applicable law, the Option will be subject to clawback or recoupment pursuant to any compensation clawback or recoupment policy adopted by the Board or required by law during the term of Optionee's employment or other Service that is applicable to Optionee. In addition to any other remedies available under such policy and applicable law, the Company may require the cancellation of Optionee's Option (whether vested or unvested) and the recoupment of any gains realized with respect to Optionee's Option.

**BY ACCEPTING THIS OPTION, OPTIONEE AGREES TO ALL OF THE TERMS AND CONDITIONS DESCRIBED ABOVE AND IN THE PLAN.**

**DAY ONE BIOPHARMACEUTICALS, INC.**
**2021 EQUITY INCENTIVE PLAN**
**NOTICE OF RESTRICTED STOCK UNIT AWARD**

You (the "***Participant***") have been granted an award of Restricted Stock Units ("***RSUs***") under the Day One Biopharmaceuticals, Inc. (the "***Company***") 2021 Equity Incentive Plan (the "***Plan***"), subject to the terms and conditions of the Plan, this Notice of Restricted Stock Unit Award (the "***Notice***") and the attached Restricted Stock Unit Award Agreement (the "***Agreement***").

Unless otherwise defined herein, the terms defined in the Plan will have the same meanings in this Notice and the electronic representation of this Notice established and maintained by the Company or a third party designated by the Company.

| | |
|---|---|
| **Name:** | _____ |
| **Address:** | _____ |
| **Grant Number:** | _____ |
| **Number of RSUs:** | _____ |
| **Date of Grant:** | _____ |
| **Vesting Commencement Date:** | _____ |
| **Expiration Date:** | The earlier to occur of: (a) the date on which settlement of all RSUs granted hereunder occurs, and (b) the tenth anniversary of the Date of Grant. This RSU expires earlier if Participant's Service terminates earlier, as described in the Agreement. |
| **Vesting Schedule:** | Subject to the limitations set forth in this Notice, the Plan, and the Agreement, the RSUs will vest in accordance with the following schedule*: [insert applicable vesting schedule, which may include performance metrics]* |

By accepting (whether in writing, electronically or otherwise) the RSUs, Participant acknowledges and agrees to the following:

1) Participant understands that Participant's Service is for an unspecified duration, can be terminated at any time (*i.e.*, is "at-will"), except where otherwise prohibited by applicable law, and that nothing in this Notice, the Agreement, or the Plan changes the nature of that relationship. Participant acknowledges that the vesting of the RSUs pursuant to this Notice is subject to Participant's continuing Service. To the extent permitted by applicable law, Participant agrees and acknowledges that the Vesting Schedule may change prospectively in the event that Participant's Service status changes between full- and part-time and/or in the event the Participant is on a leave of absence, in accordance with Company policies relating to work schedules and vesting of Awards or as determined by the Committee.

2) This grant is made under and governed by the Plan, the Agreement, and this Notice, and this Notice is subject to the terms and conditions of the Agreement and the Plan, both of which are incorporated herein by reference. Participant has read the Notice, the Agreement, and the Plan.

3) Participant has read the Company's Insider Trading Policy, and agrees to comply with such policy, as it may be amended from time to time, whenever Participant acquires or disposes of the Company's securities.

4) By accepting the RSUs, Participant consents to electronic delivery and participation as set forth in the Agreement.

| **PARTICIPANT** | | **DAY ONE BIOPHARMACEUTICALS, INC.** | |
|---|---|---|---|
| Signature: | _____ | By: | _____ |
| Print Name: | _____ | Its: | _____ |

**DAY ONE BIOPHARMACEUTICALS, INC.**
**2021 EQUITY INCENTIVE PLAN**
**RESTRICTED STOCK UNIT AWARD AGREEMENT**

Unless otherwise defined in this Restricted Stock Unit Award Agreement (this "***Agreement***"), any capitalized terms used herein will have the same meaning ascribed to them in the Day One Biopharmaceuticals, Inc. 2021 Equity Incentive Plan (the "***Plan***").

Participant has been granted Restricted Stock Units ("***RSUs***") subject to the terms, restrictions, and conditions of the Plan, the Notice of Restricted Stock Unit Award (the "***Notice***"), and this Agreement. In the event of a conflict between the terms and conditions of the Plan and the terms and conditions of the Notice or this Agreement, the terms and conditions of the Plan will prevail.

**1. Settlement.** Settlement of RSUs shall be made in the same calendar year as the applicable date of vesting under the vesting schedule set forth in the Notice; provided, however, that if a vesting date under the vesting schedule set forth in the Notice occurs in December, then settlement of any RSUs that vest in December shall be made within 30 days of vesting. Settlement of RSUs shall be in Shares. Settlement means the delivery to Participant of the Shares vested under the RSUs. No fractional RSUs or rights for fractional Shares will be created pursuant to this Agreement.

**2. No Stockholder Rights.** Unless and until such time as Shares are issued in settlement of vested RSUs, Participant will have no ownership of the Shares allocated to the RSUs and will have no rights to dividends or to vote such Shares.

**3. Dividend Equivalents.** Dividend equivalents, if any (whether in cash or Shares), will not be credited to Participant, except as permitted by the Committee.

**4. Non-Transferability of RSUs.** The RSUs and any interest therein will not be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of in any manner other than by will or by the laws of descent or distribution or court order or unless otherwise permitted by the Committee on a case-by-case basis.

**5. Termination; Leave of Absence; Change in Status.** If Participant's Service terminates for any reason, all unvested RSUs will be forfeited to the Company immediately, and all rights of Participant to such RSUs automatically terminate without payment of any consideration to Participant. Participant's Service will be considered terminated as of the date Participant is no longer providing services (regardless of the reason for such termination and whether or not later found to be invalid or in breach of employment laws in the jurisdiction where Participant is employed or the terms of Participant's employment agreement, if any) and will not, subject to the laws applicable to Participant's Award, be extended by any notice period mandated under local laws (e.g., Service would not include a period of "garden leave" or similar period mandated under employment laws in the jurisdiction where Participant is employed or the terms of Participant's employment agreement, if any). Participant acknowledges and agrees that the Vesting Schedule may change prospectively in the event Participant's service status changes between full- and part-time status and/or in the event Participant is on an approved leave of absence in accordance the Company's policies relating to work schedules and vesting of awards or as determined by the Committee. Participant acknowledges that the vesting of the Shares pursuant to this Notice and Agreement is subject to Participant's continued Service. In case of any dispute as to whether termination of Service has occurred, the Committee will have sole discretion to determine whether such termination of Service has occurred and the effective date of such termination (including whether Participant may still be considered to be providing services while on an approved leave of absence).

**6. Taxes.**

(a) Responsibility for Taxes. To the extent permitted by applicable law, Participant acknowledges that, regardless of any action taken by the Company or, if different, a Parent, Subsidiary or Affiliate employing or retaining Participant (the "***Employer***"), the ultimate liability for all income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items related to Participant's participation in the Plan and legally applicable to Participant ("***Tax-Related Items***") is and remains Participant's responsibility and may exceed the amount actually withheld by the Company or the Employer, if any. Participant further acknowledges that the Company and/or the Employer (i) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the RSUs, including, but not limited to, the grant, vesting or settlement of the RSUs and the subsequent sale of Shares acquired pursuant to such settlement and the receipt of any dividends, and (ii) do not commit to and are under no obligation to structure the terms of the grant or any aspect of the RSUs to reduce or eliminate Participant's liability for Tax-Related Items or achieve any particular tax result. Further, if Participant is subject to Tax-Related Items in more than one jurisdiction, Participant acknowledges that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction. *PARTICIPANT SHOULD CONSULT A TAX ADVISER APPROPRIATELY QUALIFIED IN THE COUNTRY OR COUNTRIES IN WHICH PARTICIPANT RESIDES OR IS SUBJECT TO TAXATION.*

(b) Withholding. Prior to any relevant taxable or tax withholding event, to the extent permitted by applicable law and as applicable, Participant agrees to make arrangements satisfactory to the Company and/or the Employer to satisfy all Tax-Related Items. In this regard, Participant authorizes the Company and/or the Employer, or their respective agents, at their discretion, to satisfy any withholding obligations for Tax-Related Items by one or a combination of the following:

(i) withholding from Participant's wages or other cash compensation paid to Participant by the Company and/or the Employer; or

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

(iii) withholding Shares to be issued upon settlement of the RSUs, provided the Company only withholds the number of Shares necessary to satisfy no more than the maximum applicable statutory withholding amounts;

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

(v) any other arrangement approved by the Committee and permitted under applicable law;

all under such rules as may be established by the Committee and in compliance with the Company's Insider Trading Policy and 10b5-1 Trading Plan Policy, if applicable; provided however, that if Participant is a Section 16 officer of the Company under the Exchange Act, then the method of withholding shall be a mandatory sale (unless the Committee (as constituted in accordance with Rule 16b-3 under the Exchange Act) shall establish an alternate method prior to the taxable or withholding event).

Depending on the withholding method, the Company may withhold or account for Tax-Related Items by considering applicable statutory withholding rates or other applicable withholding rates, including up to the maximum permissible statutory rate for Participant's tax jurisdiction(s) in which case Participant will have no entitlement to the equivalent amount in Shares and will receive a refund of any over-withheld amount in cash in accordance with applicable law. If the obligation for Tax-Related Items is satisfied by withholding in Shares, for tax purposes, Participant is deemed to have been issued the full number of Shares subject to the vested RSUs, notwithstanding that a number of the Shares are held back solely for the purpose of satisfying the withholding obligation for Tax-Related Items.

Finally, Participant agrees to pay to the Company and/or the Employer any amount of Tax-Related Items that the Company and/or the Employer may be required to withhold or account for as a result of Participant's participation in the Plan that cannot be satisfied by the means previously described. The Company has no obligation to deliver Shares or proceeds from the sale of Shares to Participant until Participant has satisfied the obligations in connection with the Tax-Related Items as described in this Section.

**7. Nature of Grant.** By accepting the RSUs, Participant acknowledges, understands and agrees that:

(a) the Plan is established voluntarily by the Company, it is discretionary in nature and it may be modified, amended, suspended or terminated by the Company at any time, to the extent permitted by the Plan;

(b) the grant of the RSUs is exceptional, voluntary, and occasional, and does not create any contractual or other right to receive future grants of RSUs, or benefits in lieu of RSUs, even if RSUs have been granted in the past;

(c) all decisions with respect to future RSUs or other grants, if any, will be at the sole discretion of the Company;

(d) Participant is voluntarily participating in the Plan;

(e) the RSUs and Participant's participation in the Plan will not create a right to employment or be interpreted as forming or amending an employment or service contract with the Company or the Employer and will not interfere with the ability of the Company or the Employer, as applicable, to terminate Participant's employment or service relationship (if any);

(f) the RSUs and the Shares subject to the RSUs, and the income and value of same, are not intended to replace any pension rights or compensation;

(g) the RSUs and the Shares subject to the RSUs, and the income and value of same, are not part of normal or expected compensation for any purpose, including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, long-service awards, pension or retirement, or welfare benefits or similar payments;

(h) unless otherwise agreed with the Company, the RSUs, and the Shares subject to the RSUs, and the income and value of same, are not granted as consideration for, or in connection with, the service Participant may provide as a director of a Parent, Subsidiary, or Affiliate;

(i) the future value of the underlying Shares is unknown, indeterminable, and cannot be predicted with certainty;

(j) no claim or entitlement to compensation or damages will arise from forfeiture of the RSUs resulting from Participant's termination of Service (regardless of the reason for such termination and whether or not later found to be invalid or in breach of employment laws in the jurisdiction where Participant is employed or the terms of Participant's employment agreement, if any), and in consideration of the grant of the RSUs to which Participant is otherwise not entitled, Participant irrevocably agrees never to institute any claim against the Employer, the Company, and any Parent, Subsidiary or Affiliate; waives his or her ability, if any, to bring any such claim; and releases the Employer, the Company, and any Parent, Subsidiary, or Affiliate from any such claim; if, notwithstanding the foregoing, any such claim is allowed by a court of competent jurisdiction, then, by participating in the Plan, Participant will be deemed irrevocably to have agreed not to pursue such claim and agrees to execute any and all documents necessary to request dismissal or withdrawal of such claim;

(k) unless otherwise provided in the Plan or by the Company in its discretion, the RSUs and the benefits evidenced by this Agreement do not create any entitlement to have the RSUs or any such benefits transferred to, or assumed by, another company nor to be exchanged, cashed out or substituted for, in connection with any Corporate Transaction affecting the Shares; and

(l) the following provisions apply only if Participant is providing services outside the United States:

(i) the RSUs and the Shares subject to the RSUs are not part of normal or expected compensation or salary for any purpose;

(ii) Participant acknowledges and agrees that neither the Company, the Employer nor any Parent or Subsidiary or Affiliate will be liable for any foreign exchange rate fluctuation between Participant's local currency and the United States Dollar that may affect the value of the RSUs or of any amounts due to Participant pursuant to the settlement of the RSUs or the subsequent sale of any Shares acquired upon settlement.

**8. No Advice Regarding Grant.** The Company is not providing any tax, legal, or financial advice, nor is the Company making any recommendations regarding Participant's participation in the Plan, or Participant's acquisition or sale of the underlying Shares. Participant acknowledges, understands and agrees he or she should consult with his or her own personal tax, legal, and financial advisors regarding his or her participation in the Plan before taking any action related to the Plan.

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

**10. Imposition of Other Requirements.** The Company reserves the right to impose other requirements on Participant's participation in the Plan, on the RSUs and on any Shares acquired under the Plan, to the extent the Company determines it is necessary or advisable for legal or administrative reasons, and to require Participant to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

**11. Acknowledgement.** The Company and Participant agree that the RSUs are granted under and governed by the Notice, this Agreement, and the Plan (incorporated herein by reference). Participant: (a) acknowledges receipt of a copy of the Plan and the Plan prospectus, (b) represents that Participant has carefully read and is familiar with their provisions, and (c) hereby accepts the RSUs subject to all of the terms and conditions set forth herein and those set forth in the Plan and the Notice.

**12. Entire Agreement; Enforcement of Rights.** This Agreement, the Plan, and the Notice constitute the entire agreement and understanding of the parties relating to the subject matter herein and supersede all prior discussions between them. Any prior agreements, commitments, or negotiations concerning the purchase of the Shares hereunder are superseded. No adverse modification of or adverse amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing and signed by the parties to this Agreement (which writing and signing may be electronic). The failure by either party to enforce any rights under this Agreement will not be construed as a waiver of any rights of such party.

**13. Compliance with Laws and Regulations.** The issuance of Shares and the sale of Shares will be subject to and conditioned upon compliance by the Company and Participant with all applicable state, federal, local and foreign laws and regulations and with all applicable requirements of any stock exchange or automated quotation system on which the Company's Shares may be listed or quoted at the time of such issuance or transfer. Participant understands that the Company is under no obligation to register or qualify the Common Stock with any state, federal, or foreign securities commission or to seek approval or clearance from any governmental authority for the issuance or sale of the Shares. Further, Participant agrees that the Company will have unilateral authority to amend the Plan and this RSU Agreement without Participant's consent to the extent necessary to comply with securities or other laws applicable to issuance of Shares. Finally, the Shares issued pursuant to this RSU Agreement will be endorsed with appropriate legends, if any, determined by the Company.

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

**15. Governing Law and Venue.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto will be governed, construed, and interpreted in accordance with the laws of the State of Delaware, without giving effect to such state's conflict of laws rules.

Any and all disputes relating to, concerning or arising from this Option Agreement, or relating to, concerning or arising from the relationship between the parties evidenced by the Plan or this Option Agreement, will be brought and heard exclusively in the United States District Court for the State of California or the Superior Court in San Francisco County, California. Each of the parties hereby represents and agrees that such party is subject to the personal jurisdiction of said courts; hereby irrevocably consents to the jurisdiction of such courts in any legal or equitable proceedings related to, concerning, or arising from such dispute, and waives, to the fullest extent permitted by law, any objection which such party may now or hereafter have that the laying of the venue of any legal or equitable proceedings related to, concerning, or arising from such dispute which is brought in such courts is improper or that such proceedings have been brought in an inconvenient forum.

**16. No Rights as Employee, Director or Consultant.** Nothing in this Agreement shall create a right to employment or other Service or be interpreted as forming or amending an employment, service contract or relationship with the Company and this Agreement shall not affect in any manner whatsoever any right or power of the Company, or a Parent, Subsidiary or Affiliate, to terminate Participant's Service, for any reason, with or without Cause.

**17. Consent to Electronic Delivery of All Plan Documents and Disclosures.** By Participant's acceptance of the Notice (whether in writing or electronically), Participant and the Company agree that the RSUs are granted under and governed by the terms and conditions of the Plan, the Notice, and this Agreement. Participant has reviewed the Plan, the Notice, and this Agreement in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Notice and Agreement, and fully understands all provisions of the Plan, the Notice, and this Agreement. Participant hereby agrees to accept as binding, conclusive, and final all decisions or interpretations of the Committee upon any questions relating to the Plan, the Notice, and this Agreement. Participant further agrees to notify the Company upon any change in Participant's residence address. By acceptance of the RSUs, Participant agrees to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company and consents to the electronic delivery of the Notice, this Agreement, the Plan, account statements, Plan prospectuses required by the U.S. Securities and Exchange Commission, U.S. financial reports of the Company, and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements), or other communications or information related to the RSUs and current or future participation in the Plan. Electronic delivery may include the delivery of a link to the Company intranet or the internet site of a third

party involved in administering the Plan, the delivery of the document via e-mail, or such other delivery determined at the Company's discretion. Participant acknowledges that Participant may receive from the Company a paper copy of any documents delivered electronically at no cost if Participant contacts the Company by telephone, through a postal service, or electronic mail to Stock Administration. Participant further acknowledges that Participant will be provided with a paper copy of any documents delivered electronically if electronic delivery fails; similarly, Participant understands that Participant must provide on request to the Company or any designated third party a paper copy of any documents delivered electronically if electronic delivery fails. Also, Participant understands that Participant's consent may be revoked or changed, including any change in the electronic mail address to which documents are delivered (if Participant has provided an electronic mail address), at any time by notifying the Company of such revised or revoked consent by telephone, postal service, or electronic mail to Stock Administration. Finally, Participant understands that Participant is not required to consent to electronic delivery if local laws prohibit such consent.

**18. Insider Trading Restrictions/Market Abuse Laws.** Participant acknowledges that, depending on Participant's country of residence, Participant may be subject to insider trading restrictions and/or market abuse laws, which may affect Participant's ability to, directly or indirectly, acquire or sell the Shares or rights to Shares under the Plan during such times as Participant is considered to have "inside information" regarding the Company (as defined by the laws in Participant's country). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. Participant acknowledges that it is Participant's responsibility to comply with any applicable restrictions and understands that Participant should consult his or her personal legal advisor on such matters. In addition, Participant acknowledges that he or she read the Company's Insider Trading Policy, and agrees to comply with such policy, as it may be amended from time to time, whenever Participant acquires or disposes of the Company's securities.

**19. Code Section 409A.** For purposes of this Agreement, a termination of employment will be determined consistent with the rules relating to a "separation from service" as defined in Section 409A of the Internal Revenue Code and the regulations thereunder ("***Section 409A***"). Notwithstanding anything else provided herein, to the extent any payments provided under this RSU Agreement in connection with Participant's termination of employment constitute deferred compensation subject to Section 409A, and Participant is deemed at the time of such termination of employment to be a "specified employee" under Section 409A, then such payment will not be made or commence until the earlier of (a) the expiration of the six (6) month period measured from Participant's separation from service to the Employer or the Company, or (b) the date of Participant's death following such a separation from service; provided, however, that such deferral will only be effected to the extent required to avoid adverse tax treatment to Participant including, without limitation, the additional tax for which Participant would otherwise be liable under Section 409A(a)(1)(B) in the absence of such a deferral. To the extent any payment under this RSU Agreement may be classified as a "short-term deferral" within the meaning of Section 409A, such payment will be deemed a short-term deferral, even if it may also qualify for an exemption from Section 409A under another provision of Section 409A. Payments pursuant to this section are intended to constitute separate payments for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

**20. Lock-Up Agreement**. In connection with the initial public offering of the Company's securities and upon request of the Company or the underwriters managing any underwritten offering of the Company's securities, Participant hereby agrees not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company however and whenever acquired (other than those included in the registration), except pursuant to a transfer for no consideration in accordance with Section 4 above, without the prior written consent of the Company or such underwriters, as the case may be, for such period of time (not to exceed one hundred eighty (180) days) from the effective date of such registration as may be requested by the Company or such managing underwriters and to execute an agreement reflecting the foregoing as may be requested by the underwriters at the time of the public offering; provided however that, if during the last seventeen (17) days of the restricted period the Company

issues an earnings release or material news or a material event relating to the Company occurs, or prior to the expiration of the restricted period the Company announces that it will release earnings results during the sixteen (16)-day period beginning on the last day of the restricted period, then, upon the request of the managing underwriter, to the extent required by any Financial Industry Regulatory Authority rules, the restrictions imposed by this Section shall continue to apply until the end of the third trading day following the expiration of the fifteen (15)-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event. In no event will the restricted period extend beyond two hundred sixteen (216) days after the effective date of the registration statement.

**21. Award Subject to Company Clawback or Recoupment.** To the extent permitted by applicable law, the RSUs will be subject to clawback or recoupment pursuant to any compensation clawback or recoupment policy adopted by the Board or required by law during the term of Participant's employment or other Service that is applicable to Participant. In addition to any other remedies available under such policy and applicable law, the Company may require the cancellation of Participant's RSUs (whether vested or unvested) and the recoupment of any gains realized with respect to Participant's RSUs.

BY ACCEPTING THIS AWARD OF RSUS, PARTICIPANT AGREES TO ALL OF THE TERMS AND CONDITIONS DESCRIBED ABOVE AND IN THE PLAN.

**NOTICE OF STOCK BONUS AWARD**

**DAY ONE BIOPHARMACEUTICALS, INC.**
**2021 EQUITY INCENTIVE PLAN**

Unless otherwise defined herein, the terms defined in the Day One Biopharmaceuticals, Inc. (the "***Company***") 2021 Equity Incentive Plan (the "***Plan***") shall have the same meanings in this Notice of Stock Bonus Award (the "***Notice***") and the attached Stock Bonus Award Agreement (the "***Stock Bonus Agreement***").

You have been granted an award of Shares under the Plan (the "***Stock Bonus Award***") subject to the terms and conditions of the Plan, this Notice and the attached Stock Bonus Agreement.

**Name:** _____

**Address:** _____

**Number of Shares:** _____

**Date of Grant:** _____

**Fair Market Value on Date of Grant:** _____

This Notice may be executed and delivered electronically, whether via the Company's intranet or the Internet site of a third party or via email or any other means of electronic delivery specified by the Company. By accepting the Stock Bonus Award, you consent to the electronic delivery and acceptance as further set forth in the Stock Bonus Agreement. You understand that your employment or consulting relationship with the Company or a Parent or Subsidiary is for an unspecified duration and can be terminated at any time, and that nothing in this Notice, the Stock Bonus Agreement or the Plan changes the nature of that relationship. By accepting this Stock Bonus Award, you and the Company agree that this Stock Bonus Award is granted under and governed by the terms and conditions of the Plan, the Notice and the Stock Bonus Agreement.

| **PARTICIPANT** | | **DAY ONE BIOPHARMACEUTICALS, INC.** | |
|---|---|---|---|
| Signature: | _____ | By: | _____ |
| Date: | _____ | Its: | _____ |

**STOCK BONUS AWARD AGREEMENT**

**DAY ONE BIOPHARMACEUTICALS, INC.**
**2021 EQUITY INCENTIVE PLAN**

You have been granted a Stock Bonus Award ("***Stock Bonus Award***") by Day One Biopharmaceuticals, Inc. (the "***Company***"), subject to the terms, restrictions and conditions of the Company's 2021 Equity Incentive Plan (the "***Plan***"), the Notice of Stock Bonus Award (the "***Notice***") and this Stock Bonus Award Agreement (this "***Agreement***").

**1. Issuance.** Your Stock Bonus Award shall be issued in Shares, and the Company's transfer agent shall record ownership of such Shares in your name as soon as reasonably practicable.

**2. No Stockholder Rights.** Unless and until you are recorded as the holder of such Shares on the stock records of the Company and its transfer agent, you shall have no right to dividends or to vote Shares.

**3. Restrictions on Resale**. By signing this Agreement, you agree not to sell any Shares acquired pursuant to the Plan and this Agreement at a time when applicable laws, regulations or Company or underwriter trading policies prohibit exercise or sale. This restriction will apply as long as you are providing Service to the Company or a Subsidiary of the Company.

**4. Tax Consequences.** YOU SHOULD CONSULT A TAX ADVISER BEFORE ACQUIRING THE SHARES IN THE JURISDICTION IN WHICH YOU ARE SUBJECT TO TAX. Shares shall not be issued under this Agreement unless you make arrangements acceptable to the Company to pay any withholding taxes that may be due as a result of the acquisition of Shares.

**5. Responsibility for Taxes**. Regardless of any action the Company or, if different, your employer (the "***Employer***") takes with respect to any or all income tax, social insurance, payroll tax, fringe benefits tax, payment on account and other tax-related items related to your participation in the Plan and legally applicable to you ("***Tax-Related Items***"), you acknowledge that the ultimate liability for all Tax-Related Items is and remains your responsibility and may exceed the amount actually withheld by the Company or the Employer. You further acknowledge that the Company and the Employer (a) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Stock Bonus Award, including the grant of the Stock Bonus Award, the issuance of the Shares subject to the Stock Bonus Award, the subsequent sale of such Shares and the receipt of any dividends; and (b) do not commit to and are under no obligation to structure the terms of the Stock Bonus Award to reduce or eliminate your liability for Tax-Related Items or achieve any particular tax result. You acknowledge that if you are subject to Tax-Related Items in more than one jurisdiction, the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

The Company will only recognize you as a record holder of Shares subject to the Stock Bonus Award if you have paid or made, prior to any relevant taxable or tax withholding event, as applicable, adequate arrangements satisfactory to the Company and/or the Employer to satisfy any withholding obligation the Company and/or the Employer may have for Tax-Related Items. In this regard, you authorize the Company and/or the Employer, and their respective agents, at their discretion, to withhold all applicable Tax-Related Items from your wages or other cash compensation paid to you by the Company and/or the Employer or by one or a combination of the following methods: (a) payment by you to the Company or the Employer of an amount equal to the Tax-Related Items in cash, (b) having the Company withhold Shares subject to the Stock Bonus Award having a value equal to the Tax-Related Items to be withheld, (c) delivering to the Company already-owned Shares having a value equal to the Tax-Related Items to be withheld, (d) withholding from proceeds of the sale of the Shares subject to the Stock Bonus Award either through a voluntary sale or through a mandatory sale arranged by the Company (on your behalf and you hereby authorize such sale pursuant to this authorization), or (e) any other arrangement approved by the Company and permissible under applicable law; in

all cases, under such rules as may be established by the Committee and in compliance with the Company's Insider Trading Policy and 10b5-1 Trading Plan Policy, if applicable; provided, however, that if you are a Section 16 officer of the Company under the Exchange Act, then the method of withholding shall be a mandatory sale under (d) above (unless the Committee shall establish an alternate method prior to the taxable or withholding event). You shall pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold as a result of your participation in the Plan or the issuance of Shares subject to this Stock Bonus Award that cannot be satisfied by the means previously described.

Depending on the withholding method, the Company may withhold or account for Tax-Related Items by considering applicable statutory withholding rates or other applicable withholding rates, including up to the maximum applicable rate in which case you may receive a refund of any over-withheld amount in cash and will have no entitlement to the Shares subject to the Stock Bonus Award that would otherwise be issued to you. If the obligation for Tax-Related Items is satisfied by withholding in Shares subject to the Stock Bonus Award that would otherwise be issued to you, for tax purposes, you are deemed to have been issued the full number of such Shares, notwithstanding that a number of the such Shares are held back solely for the purpose of paying the Tax-Related Items.

Finally, you acknowledge that the Company has no obligation to deliver Shares subject to the Stock Bonus Award to you until you have satisfied the obligations in connection with the Tax-Related Items as described in this Section.

**6. Acknowledgement.** The Company and you agree that the Stock Bonus Award is granted under and governed by the Notice, this Agreement and the provisions of the Plan (incorporated herein by reference). You: (i) acknowledge receipt of a copy of the Plan and the Plan prospectus, (ii) represent that you have carefully read and are familiar with their provisions and the provisions of the Notice and this Agreement, and (iii) hereby accept the Stock Bonus Award subject to all of the terms and conditions set forth herein and those set forth in the Plan and the Notice. You hereby agree to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions relating to the Plan, the Notice and the Stock Bonus Award.

**7. Entire Agreement; Enforcement of Rights.** This Agreement, the Plan and the Notice constitute the entire agreement and understanding of the parties relating to the subject matter herein and supersede all prior discussions between them. Any prior agreements, commitments or negotiations concerning the purchase of the Shares hereunder are superseded. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing and signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.

**8. Compliance with Laws and Regulations.** The issuance of Shares will be subject to and conditioned upon compliance by the Company and you with all applicable state, federal and foreign laws and regulations and with all applicable requirements of any stock exchange or automated quotation system on which the Company's common stock may be listed or quoted at the time of such issuance or transfer. The Shares issued pursuant to this Agreement shall be endorsed with appropriate legends, if any, determined by the Company.

**9. Stop Transfer Orders**.

**(a)** Stop-Transfer Notices. You agree that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

**(b)** Refusal to Transfer. The Company shall not be required (i) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or (ii) to treat as the owner or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been so transferred.

**10. Governing Law; Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of this Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of this Agreement shall be enforceable in accordance with its terms. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law. For purposes of litigating any dispute that may arise directly or indirectly from the Plan, the Notice and this Agreement, the parties hereby submit and consent to litigation in the exclusive jurisdiction of the State of California and agree that any such litigation shall be conducted only in the courts of California in San Francisco County, California or the federal courts of the United States for the State of California and no other courts.

**10. No Rights as Employee, Director or Consultant.** Nothing in this Agreement shall affect in any manner whatsoever the right or power of the Company, or a Parent, Subsidiary or Affiliate of the Company, to terminate your Service, for any reason, with or without Cause.

**11. Consent to Electronic Delivery and Acceptance of All Plan Documents and Disclosures**. By acceptance of this Stock Bonus Award, you consent to the electronic delivery of the Notice, this Agreement, the Plan, account statements, Plan prospectuses required by the Securities and Exchange Commission, U.S. financial reports of the Company, and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements) or other communications or information related to the Stock Bonus Award. Electronic delivery may include the delivery of a link to a Company intranet or the internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other delivery determined at the Company's discretion. You acknowledge that you may receive from the Company a paper copy of any documents delivered electronically at no cost if you contact the Company by telephone, through a postal service or electronic mail at [insert email]. You further acknowledge that you will be provided with a paper copy of any documents delivered electronically if electronic delivery fails; similarly, you understand that you must provide on request to the Company or any designated third party a paper copy of any documents delivered electronically if electronic delivery fails. You agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company. Also, you understand that your consent may be revoked or changed, including any change in the electronic mail address to which documents are delivered (if you have provided an electronic mail address), at any time by notifying the Company of such revised or revoked consent by telephone, postal service or electronic mail at [insert email]. Finally, you understand that you are not required to consent to electronic delivery.

**12. Award Subject to Company Clawback or Recoupment**. To the extent permitted by applicable law, the Stock Bonus Award shall be subject to clawback or recoupment pursuant to any compensation clawback or recoupment policy adopted by the Board or the Committee or required by law during the term of your employment or other Service that is applicable to you. In addition to any other remedies available under such policy, applicable law may require the cancellation of your Stock Bonus Award and the recoupment of any gains realized with respect to your Stock Bonus Award.

BY ACCEPTING THE STOCK BONUS AWARD, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS DESCRIBED ABOVE AND IN THE PLAN.

**NOTICE OF RESTRICTED STOCK AWARD**

**DAY ONE BIOPHARMACEUTICALS, INC.**
**2021 EQUITY INCENTIVE PLAN**

Unless otherwise defined herein, the terms defined in the Day One Biopharmaceuticals, Inc. (the "***Company***") 2021 Equity Incentive Plan (the "***Plan***") shall have the same meanings in this Notice of Restricted Stock Award (the "***Notice***") and the attached Restricted Stock Agreement (the "***Restricted Stock Agreement***").

You have been granted the opportunity to purchase Shares that are subject to restrictions (the "***Restricted Shares***") and the terms and conditions of the Plan, this Notice and the attached Restricted Stock Agreement.

**Name of Purchaser:** _____

| | |
|---|---|
| **Total Number of Restricted Shares Awarded**: | _____ |
| **Fair Market Value per Restricted Share**: | $_____ |
| **Total Fair Market Value of Award**: | $_____ |
| **Purchase Price per Restricted Share**: | $_____ |
| **Total Purchase Price for all Restricted Shares**: | $_____ |
| **Date of Grant**: | _____ |
| **Vesting Commencement Date**: | _____ |
| **Vesting Schedule**: | **[Sample vesting language:]** [Subject to the limitations set forth in this Notice, the Plan and the Restricted Stock Agreement, 25% of the total number of Restricted Shares will vest when you complete 12 months of continuous Service from the Vesting Commencement Date. Thereafter, an additional 1/16th of the total number of Restricted Shares will vest when you complete each quarter of Service.] [Note: actual vesting language to match vesting schedule approved by the Board or Committee] |

This Notice may be executed and delivered electronically, whether via the Company's intranet or the Internet site of a third party or via email or any other means of electronic delivery specified by the Company. By purchasing the Restricted Shares, you consent to the electronic delivery and acceptance as further set forth in the Restricted Stock Agreement. You acknowledge that the vesting of the Restricted Shares pursuant to this Notice is earned only by continuing Service, but you understand that your employment or consulting relationship with the Company or a Parent or Subsidiary is for an unspecified duration and can be terminated at any time, and that nothing in this Notice, the Restricted Stock Agreement or the Plan changes the nature of that relationship. By accepting the Restricted Shares, you and the Company agree that the Restricted Shares are granted under and governed by the terms and conditions of the Plan, this Notice and the Restricted Stock Agreement. **If the Restricted Stock Agreement is not executed by you within thirty (30) days of the Company's delivery of this Agreement to you, then this award shall be void.**

| **PARTICIPANT:** | | **DAY ONE BIOPHARMACEUTICALS, INC.** | |
|---|---|---|---|
| Signature | _____ | By: | _____ |
| Date: | _____ | Its: | _____ |

**RESTRICTED STOCK AGREEMENT**

**DAY ONE BIOPHARMACEUTICALS, INC.**
**2021 EQUITY INCENTIVE PLAN**

THIS RESTRICTED STOCK AGREEMENT (this "***Agreement***") is made by and between Day One Biopharmaceuticals, Inc., a Delaware corporation (the "***Company***"), and the purchaser ("***you***") named on the Notice of Restricted Stock Award (the "***Notice***") pursuant to the Company's 2021 Equity Incentive Plan (the "***Plan***") as of the date you have executed the Notice. Unless otherwise defined herein, the terms defined in the Plan shall have the same meanings in this Agreement.

**1.** Sale of Stock. Subject to the terms and conditions of this Agreement, on the Purchase Date (as defined below) the Company will issue and sell to you, and you agree to purchase from the Company, the number of Restricted Shares shown on the Notice at the Purchase Price per Restricted Share set forth on the Notice. The term "***Restricted Shares***" refers to the purchased Restricted Shares and all securities received in replacement of or in connection with the Restricted Shares pursuant to stock dividends or splits, all securities received in replacement of the Restricted Shares in a recapitalization, merger, reorganization, exchange or the like, and all new, substituted or additional securities or other properties to which you are entitled by reason of your ownership of the Restricted Shares.

**2.** Time and Place of Purchase. The purchase and sale of the Restricted Shares under this Agreement shall occur at the principal office of the Company simultaneously with the execution of this Agreement by the parties, or on such other date as the Company and you shall agree (the "***Purchase Date***"). On the Purchase Date, the Company will issue a stock certificate registered in your name, or uncertificated shares designated for you in book entry form on the records of the Company's transfer agent, representing the Restricted Shares to be purchased by you against payment of the purchase price therefor by you by (a) check or wire transfer made payable to the Company, (b) cancellation of indebtedness of the Company to you, (c) your personal Services that the Committee has determined have already been or will be rendered to the Company, or (d) a combination of the foregoing.

**3.** Restrictions on Resale. By signing this Agreement, you agree not to sell any Restricted Shares acquired pursuant to the Plan and this Agreement at a time when applicable laws, regulations or Company or underwriter trading policies prohibit exercise or sale. This restriction will apply as long as you are providing Service to the Company or a Subsidiary of the Company.

**4.** Company's Repurchase Right for Unvested Shares. The Company, or (subject to Section 4.4) its assignee, shall have the right (but not the obligation) to repurchase a portion of the Restricted Shares that are Unvested Shares (as defined below) at the times and on the terms and conditions set forth in this Section (the "***Repurchase Right***") if your Service terminates for any reason, or no reason, including without limitation, death, Disability (as defined in the Plan), voluntary resignation or termination by the Company with or without Cause.

**4.1** Termination of Service. In case of any dispute as to whether your Service has terminated, the Committee shall have discretion to determine in good faith whether your Service has been terminated and the effective date of your termination of Service.

**4.2** Vested and Unvested Shares. Restricted Shares that are vested pursuant to the Vesting Schedule set forth in the Notice are "***Vested Shares***." Restricted Shares that are not vested pursuant to the Vesting Schedule set forth in the Notice are "***Unvested Shares***." On the Date of Grant, all of the Restricted Shares will be Unvested Shares. No fractional Restricted Shares shall be issued. No Restricted Shares will become Vested Shares after your termination of Service unless as set forth in the Vesting Schedule in the Notice of Grant. The number of the Restricted Shares that are Vested Shares or Unvested Shares will be proportionally adjusted to reflect any stock split, reverse stock split or similar change in the capital structure of the Company as set forth in Section 2.6 of the Plan occurring after the Date of Grant.

**4.3** Exercise of Repurchase Right. Unless the Company provides written notice to you within 90 days from the date of termination of your Service to the Company that the Company does not intend to exercise its Repurchase Right with respect to some or all of the Unvested Shares, the Repurchase Right shall be deemed automatically exercised by the Company as of the 90th day following such termination, provided that the Company may notify you that it is exercising its Repurchase Right as of a date prior to such 90th day. Unless you are otherwise notified by the Company pursuant to the preceding sentence that the Company does not intend to exercise its Repurchase Right as to some or all of the Unvested Shares, execution of this Agreement by you constitutes written notice to you of the Company's intention to exercise its Repurchase Right with respect to all Unvested Shares to which such Repurchase Right applies at the time of your termination of Service. The Company, at its choice, may satisfy its payment obligation to you with respect to exercise of the Repurchase Right by either (A) delivering a check to you or wiring funds in the amount of the purchase price for the Unvested Shares being repurchased, or (B) in the event you are indebted to the Company, canceling an amount of such indebtedness equal to the purchase price for the Unvested Shares being repurchased, or (C) by a combination of (A) and (B) so that the combined payment and cancellation of indebtedness equals such purchase price. In the event of any deemed automatic exercise of the Repurchase Right by canceling an amount of such indebtedness equal to the purchase price for the Unvested Shares being repurchased, such cancellation of indebtedness shall be deemed automatically to occur as of the date of termination of your Service unless the Company otherwise satisfies its payment obligations. As a result of any repurchase of Unvested Shares pursuant to the Repurchase Right, the Company shall become the legal and beneficial owner of the Unvested Shares being repurchased and shall have all rights and interest therein or related thereto, and the Company shall have the right to transfer to its own name the number of Unvested Shares being repurchased by the Company, without further action by you.

**4.4** Assignment. The Repurchase Right may be assigned by the Company in whole or in part to any persons or organization.

**4.5** Additional or Exchanged Securities and Property. Subject to the provisions of Section 4.2 above, in the event of a merger or consolidation of the Company with or into another entity, any other corporate reorganization, a stock dividend, recapitalization, stock split, reverse stock split, subdivision, combination, reclassification or similar change in the capital structure of the Company, without consideration, any securities or other property (including cash or cash equivalents) that are by reason of such transaction exchanged for, or distributed or issued with respect to, any Unvested Shares shall immediately be subject to the Repurchase Right. Appropriate adjustments shall be made to the price per share to be paid for Unvested Shares upon the exercise of the Repurchase Right (by allocating such price among the Unvested Shares and such other securities or property), *provided* that the aggregate purchase price payable for the Unvested Shares and all such other securities and property shall remain the same price that was original payable under the Repurchase Right to repurchase such Unvested Shares. Subject to the provisions of Section 4.2 above, in the event of a merger or consolidation of the Company with or into another entity or any other corporate reorganization, the Repurchase Right may be exercised by the Company's successor.

**5.** Non-Transferability of Unvested Shares. In addition to any other limitation on transfer created by applicable securities laws or any other agreement between the Company and you, you may not transfer any Unvested Shares, or any interest therein, unless consented to in writing by a duly authorized representative of the Company. Any purported transfer is void and of no effect, and no purported transferee thereof will be recognized as a holder of the Unvested Shares for any purpose whatsoever. Should such a transfer purport to occur, the Company may refuse to carry out the transfer on its books, set aside the transfer, or exercise any other legal or equitable remedy. In the event the Company consents to a transfer of Unvested Shares, all transferees of Restricted Shares or any interest therein will receive and hold such Restricted Shares or interest subject to the provisions of this Agreement, including, insofar as applicable, the Repurchase Right. In the event of any purchase by the Company hereunder where the Restricted Shares or interest are held by a transferee, the transferee shall be obligated, if requested by the Company, to transfer the Restricted Shares or interest you for consideration equal to the amount to be paid by the Company hereunder. In the event the Repurchase Right is deemed exercised by the Company, the Company may deem any transferee to have transferred the Restricted Shares or interest to you prior to their purchase by the Company, and payment of the purchase price by the Company to such transferee shall be deemed to satisfy your obligation to pay such transferee for such Restricted Shares or interest, and also to satisfy the Company's obligation to pay you for such Restricted Shares or interest.

**6.** Acceptance of Restrictions. Purchase of the Restricted Shares shall constitute your agreement to such restrictions and the legending of your certificates or the notation in the Company's direct registration system for stock issuance and transfer of such restrictions and accompanying legends set forth in Section 7.1 with respect thereto. Notwithstanding such restrictions, however, so long as you are the holder of the Restricted Shares, or any portion thereof, he or she shall be entitled to receive all dividends declared on and to vote the Restricted Shares and to all other rights of a stockholder with respect thereto.

**7.** Stop Transfer Orders.

**7.1** Stop-Transfer Notices. You agree that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

**7.2** Refusal to Transfer. The Company shall not be required (i) to transfer on its books any Restricted Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or (ii) to treat as the owner or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Restricted Shares shall have been so transferred.

**8.** No Rights as Employee, Director or Consultant. You understand that your employment or consulting relationship with the Company is for an unspecified duration, can be terminated at any time (i.e., is "at-will"), and that nothing in this Agreement changes the at-will nature of that relationship. Nothing in this Agreement shall affect in any manner whatsoever the right or power of the Company, or a Parent, Subsidiary or Affiliate of the Company, to terminate your Service, for any reason, with or without Cause.

**9.** Miscellaneous.

**9.1** Acknowledgement. The Company and you agree that the Restricted Shares are granted under and governed by the Notice, this Agreement and the provisions of the Plan (incorporated herein by reference). You: (i) acknowledge receipt of a copy of the Plan and the Plan prospectus, (ii) represent that you have carefully read and are familiar with their provisions and the provisions of the Notice and this Agreement, and (iii) hereby accept the Restricted Shares subject to all of the terms and conditions set forth herein and those set forth in the Plan and the Notice. You hereby agree to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions relating to the Plan, the Notice and the Restricted Stock Agreement.

**9.2** Entire Agreement; Enforcement of Rights. This Agreement, the Plan and the Notice constitute the entire agreement and understanding of the parties relating to the subject matter herein and supersede all prior discussions between them. Any prior agreements, commitments or negotiations concerning the purchase of the Restricted Shares hereunder are superseded. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing and signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.

**9.3** Compliance with Laws and Regulations. The issuance of Restricted Shares will be subject to and conditioned upon compliance by the Company and you with all applicable state, federal and foreign laws and regulations and with all applicable requirements of any stock exchange or automated quotation system on which the Company's common stock may be listed or quoted at the time of such issuance or transfer. The Restricted Shares issued pursuant to this Agreement shall be endorsed with appropriate legends, if any, determined by the Company.

**9.4** Governing Law; Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of this Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of this Agreement shall be enforceable in accordance with its terms. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law. For purposes of litigating any dispute that may arise directly or indirectly from the Plan, the Notice and this Agreement, the parties hereby submit and consent to litigation in the exclusive jurisdiction of the State of California and agree that any such litigation shall be conducted only in the courts of California in San Francisco County, California or the federal courts of the United States for the State of California and no other courts.

**9.5** Construction. This Agreement is the result of negotiations between and has been reviewed by each of the parties hereto and their respective counsel, if any; accordingly, this Agreement shall be deemed to be the product of all of the parties hereto, and no ambiguity shall be construed in favor of or against any one of the parties hereto.

**9.6** Notices. Any notice to be given under the terms of the Plan shall be addressed to the Company in care of its principal office, and any notice to be given to you shall be addressed to you at the address maintained by the Company for such person or at such other address as you may specify in writing to the Company. Any and all notices required or permitted to be given to a party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed to provide such party sufficient notice under this Agreement on the earliest of the following: (a) at the time of personal delivery, if delivery is in person; (b) at the time of transmission by facsimile, addressed to the other party at its facsimile number specified herein (or hereafter modified by subsequent notice to the parties hereto), with confirmation of receipt made by both telephone and printed confirmation sheet verifying successful transmission of the facsimile; (c) one (1) business day after deposit with an express overnight courier for United States deliveries, or two (2) business days after such deposit for deliveries outside of the United States, with proof of delivery from the courier requested; or (d) three (3) business days after deposit in the United States mail by certified mail (return receipt requested) for United States deliveries. All notices for delivery outside the United States will be sent by facsimile or by express courier. All notices not

delivered personally or by facsimile will be sent with postage and/or other charges prepaid and properly addressed to the party to be notified at the address or facsimile number set forth below the signature lines of this Agreement, or at such other address or facsimile number as such other party may designate by one of the indicated means of notice herein to the other parties hereto. Notices to the Company will be marked "Attention: [title]."

**9.7** U.S. Tax Consequences. Unless an Election (defined below) is made, upon vesting of Restricted Shares, you will include in taxable income the difference between the fair market value of the vesting Restricted Shares, as determined on the date of their vesting, and the price paid for the Restricted Shares. This will be treated as ordinary income by you and will be subject to withholding by the Company when required by applicable law. In the absence of an Election, the Company shall satisfy the withholding requirements as set forth in Section 10 below. If you make an Election, then you must, prior to making the Election, pay in cash (or cash equivalent) to the Company an amount equal to the amount the Company is required to withhold for income and employment taxes.

**10.** Responsibility for Taxes. Regardless of any action the Company or, if different, your employer (the "***Employer***") takes with respect to any or all income tax, social insurance, payroll tax, fringe benefits tax, payment on account and other tax-related items related to your participation in the Plan and legally applicable to you ("***Tax-Related Items***"), you acknowledge that the ultimate liability for all Tax-Related Items is and remains your responsibility and may exceed the amount actually withheld by the Company or the Employer. You further acknowledge that the Company and the Employer (a) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Restricted Shares purchased under this award, including the issuance of the Restricted Shares or vesting of such Restricted Shares, the subsequent sale of Restricted Shares and the receipt of any dividends; and (b) do not commit to and are under no obligation to structure the terms of the award or any aspect of the Restricted Shares to reduce or eliminate your liability for Tax-Related Items or achieve any particular tax result. You acknowledge that if you are subject to Tax-Related Items in more than one jurisdiction, the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

The Company will only recognize you as a record holder of Restricted Shares if you have paid or made, prior to any relevant taxable or tax withholding event, as applicable, adequate arrangements satisfactory to the Company and/or the Employer to satisfy any withholding obligation the Company and/or the Employer may have for Tax-Related Items. In this regard, you authorize the Company and/or the Employer, and their respective agents, at their discretion, to withhold all applicable Tax-Related Items from your wages or other cash compensation paid to you by the Company and/or the Employer or by one or a combination of the following methods: (a) payment by you to the Company or the Employer of an amount equal to the Tax-Related Items in cash, (b) having the Company withhold otherwise deliverable Restricted Shares that would otherwise be released from the Repurchase Right when they vest having a value equal to the Tax-Related Items to be withheld, (c) delivering to the Company already-owned Shares having a value equal to the Tax-Related Items to be withheld, (d) withholding from proceeds of the sale of the Restricted Shares either through a voluntary sale or through a mandatory sale arranged by the Company (on your behalf and you hereby authorize such sale pursuant to this authorization), or (e) any other arrangement approved by the Company and permissible under applicable law; in all cases, under such rules as may be established by the Committee and in compliance with the Company's Insider Trading Policy and 10b5-1 Trading Plan Policy, if applicable; provided, however, that if you are a Section 16 officer of the Company under the Exchange Act, then the method of withholding shall be a mandatory sale under (d) above (unless the Committee shall establish an alternate method prior to the taxable or withholding event). You shall pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold as a result of your Participation in the Plan or your purchase of Restricted Shares that cannot be satisfied by the means previously described.

Depending on the withholding method, the Company may withhold or account for Tax-Related Items by considering applicable statutory withholding rates or other applicable withholding rates, including up to the maximum applicable rate in which case you may receive a refund of any over-withheld amount in cash and will have no entitlement to the Restricted Shares that would otherwise be released from the Repurchase Right when they vest. If the obligation for Tax-Related Items is satisfied by withholding in Restricted Shares that would otherwise be released from the Repurchase Right when they vest, for tax purposes, you are deemed to have been issued the full number of Restricted Shares, notwithstanding that a number of the Restricted Shares are held back solely for the purpose of paying the Tax-Related Items.

Finally, you acknowledge that the Company has no obligation to deliver Restricted Shares or proceeds from the sale of Restricted Shares to you or to release Restricted Shares from the Repurchase Right when they vest until you have satisfied the obligations in connection with the Tax-Related Items as described in this Section.

**11.** Section 83(b) Election. You hereby acknowledge that you have been informed that, with respect to the purchase of the Restricted Shares, an election may be filed by you with the Internal Revenue Service, within 30 days of the purchase of the Restricted Shares, electing for United States tax purposes pursuant to Section 83(b) of the Code to be taxed currently on any difference between the purchase price of the Restricted Shares and their Fair Market Value on the date of purchase (the "***Election***"). Making the Election will result in recognition of taxable income to you on the date of purchase, measured by the excess, if any, of the Fair Market Value of the Restricted Shares over the purchase price for the Restricted Shares. Absent such an Election, taxable income will be measured and recognized by you at the time or times on which the Company's Repurchase Right lapses. You are strongly encouraged to seek the advice of your own tax advisors in connection with the purchase of the Restricted Shares and the advisability of filing of the Election. YOU ACKNOWLEDGE THAT IT IS SOLELY YOUR RESPONSIBILITY, AND NOT THE COMPANY'S RESPONSIBILITY, TO TIMELY FILE THE ELECTION UNDER SECTION 83(b) OF THE CODE, EVEN IF YOU REQUEST THE COMPANY, OR ITS REPRESENTATIVE, TO MAKE THIS FILING ON YOUR BEHALF.

**12.** Consent to Electronic Delivery and Acceptance of All Plan Documents and Disclosures. By acceptance of this Restricted Stock Award, you consent to the electronic delivery of the Notice, this Agreement, the Plan, account statements, Plan prospectuses required by the Securities and Exchange Commission, U.S. financial reports of the Company, and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements) or other communications or information related to the Restricted Stock Award. Electronic delivery may include the delivery of a link to a Company intranet or the internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other delivery determined at the Company's discretion. You acknowledge that you may receive from the Company a paper copy of any documents delivered electronically at no cost if you contact the Company by telephone, through a postal service or electronic mail at [insert email]. You further acknowledge that you will be provided with a paper copy of any documents delivered electronically if electronic delivery fails; similarly, you understand that you must provide on request to the Company or any designated third party a paper copy of any documents delivered electronically if electronic delivery fails. You agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company. Also, you understand that your consent may be revoked or changed, including any change in the electronic mail address to which documents are delivered (if you have provided an electronic mail address), at any time by notifying the Company of such revised or revoked consent by telephone, postal service or electronic mail at [insert email]. Finally, you understand that you are not required to consent to electronic delivery.

**13.** Award Subject to Company Clawback or Recoupment. To the extent permitted by applicable law, the Restricted Shares shall be subject to clawback or recoupment pursuant to any compensation clawback or recoupment policy adopted by the Board or the Committee or required by law during the term of your employment or other Service that is applicable to you. In addition to any other remedies available under such policy, applicable law may require the cancellation of your Restricted Shares (whether vested or unvested) and the recoupment of any gains realized with respect to your Restricted Shares.

BY ACCEPTING THIS RESTRICTED STOCK AWARD, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS DESCRIBED ABOVE AND IN THE PLAN.

**RECEIPT**

Day One Biopharmaceuticals, Inc. hereby acknowledges receipt of (check as applicable):

☐ A check or wire transfer in the amount of $_____

☐ The cancellation of indebtedness in the amount of $_____

☐ Given by _____ as consideration for the book entry in your name or Certificate No. -__ for _____ shares of Common Stock of Day One Biopharmaceuticals, Inc.

☐ Other method as permitted by the Plan and specifically approved by the Board or Committee, and described here:
_____

Dated: _____

**DAY ONE BIOPHARMACEUTICALS, INC.**

By: _____
Its: _____

**NOTICE OF PERFORMANCE SHARES AWARD**

**DAY ONE BIOPHARMACEUTICALS, INC.**
**2021 EQUITY INCENTIVE PLAN**

Unless otherwise defined herein, the terms defined in the Day One Biopharmaceuticals, Inc. (the "***Company***") 2021 Equity Incentive Plan (the "***Plan***") shall have the same meanings in this Notice of Performance Shares Award (the "***Notice***") and the attached Performance Shares Award Agreement (the "***Performance Shares Agreement***"). You have been granted an award of Shares (the "***Performance Shares Award***") under the Plan subject to the terms and conditions of the Plan, this Notice and the attached Performance Shares Agreement.

| | |
|---|---|
| **Name:** | _____ |
| **Address:** | _____ |
| **Number of Shares:** | _____ |
| **Date of Grant:** | _____ |
| **Fair Market Value on Date of Grant:** | _____ |
| **Vesting Commencement Date:** | _____ |
| **Vesting Schedule:** | Subject to the limitations set forth in this Notice, the Plan and the Performance Shares Agreement, the Shares will vest in accordance with the following schedule: **[INSERT VESTING SCHEDULE]** |

This Notice may be executed and delivered electronically, whether via the Company's intranet or the Internet site of a third party or via email or any other means of electronic delivery specified by the Company. By accepting the Performance Shares Award, you consent to the electronic delivery and acceptance as further set forth in the Performance Shares Agreement. You acknowledge that the vesting of the Shares subject to the Performance Shares Award pursuant to this Notice is earned only by continuing Service and meeting the performance factors enumerated under the Vesting Schedule above, but you understand that your employment or consulting relationship with the Company or a Parent or Subsidiary is for an unspecified duration and can be terminated at any time, and that nothing in this Notice, the Performance Shares Agreement or the Plan changes the nature of that relationship. By accepting the Performance Shares Award, you and the Company agree that the Performance Shares Award is granted under and governed by the terms and conditions of the Plan, the Notice and the Performance Shares Agreement

| **PARTICIPANT** | | **DAY ONE BIOPHARMACEUTICALS, INC.** | |
|---|---|---|---|
| Print Name: | _____ | By: | _____ |
| Signature: | _____ | Its: | _____ |

**PERFORMANCE SHARES AGREEMENT**

**DAY ONE BIOPHARMACEUTICALS, INC.**
**2021 EQUITY INCENTIVE PLAN**

You have been granted a Performance Shares Award ("***Performance Shares Award***") by Day One Biopharmaceuticals, Inc. (the "***Company***"), subject to the terms, restrictions and conditions of the Company's 2021 Equity Incentive Plan (the "***Plan***"), the Notice of Performance Shares Award ("***Notice***") and this Performance Shares Agreement (this "***Agreement***").

**1. Settlement.** Your Performance Shares Award shall be settled in Shares and the Company's transfer agent shall record ownership of such Shares in your name as soon as reasonably practicable after achievement of the performance factors enumerated under the Vesting Schedule in the Notice.

**2. No Stockholder Rights.** Unless and until you are recorded as the holder of such Shares on the stock records of the Company and its transfer agent, you shall have no right to dividends or to vote Shares.

**3. No Transfer.** Your interest in this Performance Shares Award shall not be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of by you or any person whose interest derives from your interest.

**4. Restrictions on Resale**. By signing this Agreement, you agree not to sell any Shares acquired pursuant to the Plan and this Agreement at a time when applicable laws, regulations or Company or underwriter trading policies prohibit exercise or sale. This restriction will apply as long as you are providing Service to the Company or a Subsidiary of the Company.

**5. Termination.** If your Service terminates for any reason, all of your rights under the Plan, this Agreement and the Notice in respect of this Award shall immediately terminate. In case of any dispute as to whether a termination of Service has occurred, the Committee shall have sole discretion to determine whether such termination has occurred and the effective date of such termination.

**6. Tax Consequences.** YOU SHOULD CONSULT A TAX ADVISER BEFORE ACQUIRING THE SHARES IN THE JURISDICTION IN WHICH YOU ARE SUBJECT TO TAX. Shares shall not be issued under this Agreement unless you make arrangements acceptable to the Company to pay any withholding taxes that may be due as a result of the acquisition or vesting of Shares.

**7. Responsibility for Taxes**. Regardless of any action the Company or, if different, your employer (the "***Employer***") takes with respect to any or all income tax, social insurance, payroll tax, fringe benefits tax, payment on account and other tax-related items related to your participation in the Plan and legally applicable to you ("***Tax-Related Items***"), you acknowledge that the ultimate liability for all Tax-Related Items is and remains your responsibility and may exceed the amount actually withheld by the Company or the Employer. You further acknowledge that the Company and the Employer (a) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Performance Shares Award, including the grant of the Performance Shares Award, the issuance of the Shares subject to the Performance Shares Award, the vesting of such Shares, the subsequent sale of such Shares and the receipt of any dividends; and (b) do not commit to and are under no obligation to structure the terms of the Performance Shares Award to reduce or eliminate your liability for Tax-Related Items or achieve any particular tax result. You acknowledge that if you are subject to Tax-Related Items in more than one jurisdiction, the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

The Company will only recognize you as a record holder of Shares subject to the Performance Shares Award if you have paid or made, prior to any relevant taxable or tax withholding event, as applicable, adequate arrangements satisfactory to the Company and/or the Employer to satisfy any withholding obligation the Company and/or the Employer may have for Tax-Related Items. In this regard, you authorize the Company and/or the Employer, and their respective agents, at their discretion, to withhold all applicable Tax-Related Items from your wages or other cash compensation paid to you by the Company and/or the Employer or by withholding from proceeds of the sale of the Shares subject to the Performance Shares Award either through a voluntary sale or through a mandatory sale arranged by the Company (on your behalf and you hereby authorize such sale pursuant to this authorization). The Committee may also authorize one or a combination of the following methods to satisfy Tax-Related Items: (a) payment by you to the Company or the Employer of an amount equal to the Tax-Related Items in cash, (b) having the Company withhold Shares subject to the Performance Shares Award that would otherwise be issued to you when they vest having a value equal to the Tax-Related Items to be withheld, (c) delivering to the Company already-owned Shares having a value equal to the Tax-Related Items to be withheld, or (d) any other arrangement approved by the Company and permissible under applicable law; in all cases, under such rules as may be established by the Committee and in compliance with the Company's Insider Trading Policy and 10b5-1 Trading Plan Policy, if applicable; provided, however, that if you are a Section 16 officer of the Company under the Exchange Act, then the method of withholding shall be a mandatory sale (unless the Committee shall establish an alternate method prior to the taxable or withholding event). You shall pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold as a result of your participation in the Plan or the issuance of Shares subject to this Performance Shares Award or vesting thereof that cannot be satisfied by the means previously described.

Depending on the withholding method, the Company may withhold or account for Tax-Related Items by considering applicable statutory withholding rates or other applicable withholding rates, including up to the maximum applicable rate in which case you may receive a refund of any over-withheld amount in cash and will have no entitlement to the Shares subject to the Performance Shares Award that would otherwise be released when they vest. If the obligation for Tax-Related Items is satisfied by withholding in Shares that would otherwise be subject to release when they vest, for tax purposes, you are deemed to have been issued the full number of such Shares, notwithstanding that a number of the such Shares are held back solely for the purpose of paying the Tax-Related Items.

Finally, you acknowledge that the Company has no obligation to deliver Shares subject to the Performance Shares Award to you until you have satisfied the obligations in connection with the Tax-Related Items as described in this Section.

**8. Acknowledgement.** The Company and you agree that the Performance Shares Award is granted under and governed by the Notice, this Agreement and the provisions of the Plan (incorporated herein by reference). You: (i) acknowledge receipt of a copy of the Plan and the Plan prospectus, (ii) represent that you have carefully read and are familiar with their provisions and the provisions of the Notice and this Agreement, and (iii) hereby accept the Performance Shares Award subject to all of the terms and conditions set forth herein and those set forth in the Plan and the Notice. You hereby agree to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions relating to the Plan, the Notice and this Agreement.

**9. Entire Agreement; Enforcement of Rights.** This Agreement, the Plan and the Notice constitute the entire agreement and understanding of the parties relating to the subject matter herein and supersede all prior discussions between them. Any prior agreements, commitments or negotiations concerning the purchase of the Shares hereunder are superseded. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing and signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.

**10. Stop Transfer Orders**.

**(a)** Stop-Transfer Notices. You agree that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

**(b)** Refusal to Transfer. The Company shall not be required (i) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or (ii) to treat as the owner or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been so transferred.

**11. Compliance with Laws and Regulations.** The issuance of Shares will be subject to and conditioned upon compliance by the Company and you with all applicable state, federal and foreign laws and regulations and with all applicable requirements of any stock exchange or automated quotation system on which the Company's common stock may be listed or quoted at the time of such issuance or transfer. The Shares issued pursuant to this Agreement shall be endorsed with appropriate legends, if any, determined by the Company.

**12. Governing Law; Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of this Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of this Agreement shall be enforceable in accordance with its terms. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law. For purposes of litigating any dispute that may arise directly or indirectly from the Plan, the Notice and this Agreement, the parties hereby submit and consent to litigation in the exclusive jurisdiction of the State of California and agree that any such litigation shall be conducted only in the courts of the State of California in San Francisco County, California or the federal courts of the United States for the State of California and no other courts.

**10. No Rights as Employee, Director or Consultant.** Nothing in this Agreement shall affect in any manner whatsoever the right or power of the Company, or a Parent, Subsidiary or Affiliate of the Company, to terminate your Service, for any reason, with or without Cause.

11**. Consent to Electronic Delivery of All Plan Documents and Disclosures.** By acceptance of this Performance Shares Award, you consent to the electronic delivery of the Notice, this Agreement, the Plan, account statements, Plan prospectuses required by the Securities and Exchange Commission, U.S. financial reports of the Company, and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements) or other communications or information related to the Performance Shares Award. Electronic delivery may include the delivery of a link to a Company intranet or the internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other delivery determined at the Company's discretion. You acknowledge that you may receive from the Company a paper copy of any documents delivered electronically at no cost if you contact the Company by telephone, through a postal service or electronic mail at [insert email]. You further acknowledge that you will be provided with a paper copy of any documents delivered electronically if electronic delivery fails; similarly, you understand that you must provide on request to the Company or any designated third party a paper copy of any documents delivered electronically if electronic delivery fails. You agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company. Also, you understand that your consent may be revoked or changed, including any change in the electronic mail address to which documents are delivered (if you have provided an electronic mail address), at any time by notifying the Company of such revised or revoked consent by telephone, postal service or electronic mail at [insert email]. Finally, you understand that you are not required to consent to electronic delivery.

12. **Award Subject to Company Clawback or Recoupment.** To the extent permitted by applicable law, Performance Shares Award shall be subject to clawback or recoupment pursuant to any compensation clawback or recoupment policy adopted by the Board or the Committee or required by law during the term of your employment or other Service that is applicable to you. In addition to any other remedies available under such policy, applicable law may require the cancellation of your Performance Shares Award (whether vested or unvested) and the recoupment of any gains realized with respect to your Performance Shares Award.

BY ACCEPTING THE PERFORMANCE SHARES AWARD, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS DESCRIBED ABOVE AND IN THE PLAN.

**NOTICE OF STOCK APPRECIATION RIGHT AWARD**

**DAY ONE BIOPHARMACEUTICALS, INC.**
**2021 EQUITY INCENTIVE PLAN**

Unless otherwise defined herein, the terms defined in the Day One Biopharmaceuticals, Inc. (the "***Company***") 2021 Equity Incentive Plan (the "***Plan***") shall have the same meanings in this Notice of Stock Appreciation Right Award (the "***Notice of Grant***") and the attached Stock Appreciation Right Agreement (the "***SAR Agreement***").

You have been granted an award of Stock Appreciation Rights (the "***SAR***") of the Company under the Plan subject to the terms and conditions of the Plan, this Notice of Grant and the SAR Agreement.

| | |
|---|---|
| **Name:** | _____ |
| **Address:** | _____ |
| **Date of Grant:** | _____ |
| **Vesting Commencement Date:** | _____ |
| **Exercise Price:** | _____ |
| **Total Number of Shares:** | _____ |
| **Expiration Date:** | _____ |
| **Vesting Schedule:** | **[Sample vesting language:]** [The SAR becomes vested and exercisable with respect to the first 25% of the Shares subject to the SAR when you complete 12 months of continuous Service from the Vesting Commencement Date. Thereafter, the SAR becomes vested and exercisable with respect to an additional 1/16$^{th}$ of the Shares subject to the SAR when you complete each quarter of Service.] [Note: actual vesting language to match vesting schedule approved by the Board or Committee] |

This Notice of Grant may be executed and delivered electronically, whether via the Company's intranet or the Internet site of a third party or via email or any other means of electronic delivery specified by the Company. By accepting the SAR, you consent to the electronic delivery and acceptance as further set forth in the SAR Agreement. You acknowledge that the vesting of the SAR pursuant to this Notice of Grant is earned only by continuing Service, but you understand that your employment or consulting relationship with the Company or a Parent or Subsidiary is for an unspecified duration and can be terminated at any time and that nothing in this Notice of Grant, the SAR Agreement or the Plan changes the nature of that relationship. By accepting the SAR, you and the Company agree that the SAR is granted under and governed by the terms and conditions of the Plan, the Notice of Grant and the SAR Agreement.

| **PARTICIPANT:** | | **DAY ONE BIOPHARMACEUTICALS, INC.** | |
|---|---|---|---|
| Signature: | _____ | By: | _____ |
| Print Name: | _____ | Its: | _____ |

**STOCK APPRECIATION RIGHT AWARD AGREEMENT**

**DAY ONE BIOPHARMACEUTICALS, INC.**
**2021 EQUITY INCENTIVE PLAN**

You have been granted an award of Stock Appreciation Rights (the "***SAR***") by Day One Biopharmaceuticals, Inc. (the "***Company***") under the Company's 2021 Equity Incentive Plan (the "***Plan***"), subject to the terms and conditions of the Plan, the Notice of Stock Appreciation Right Award (the "***Notice of Grant***"), and this Stock Appreciation Right Agreement (the "***Agreement***").

**1. Grant of SAR**. You have been granted a SAR for the number of Shares set forth in the Notice of Grant with the Exercise Price set forth in the Notice of Grant. In the event of a conflict between the terms and conditions of the Plan and the terms and conditions of this Agreement, the terms and conditions of the Plan shall prevail.

**2. Termination Period**.

(a) General Rule. If your Service terminates for any reason except death or Disability, and other than for Cause, then this SAR will expire at the close of business at Company headquarters on the date three months after your termination of Service (subject to the expiration detailed in Section 5 or as provided in the Plan). In no event shall this SAR be exercised later than the Expiration Date set forth in the Notice of Grant. If your Service is terminated for Cause, this SAR will expire upon the date of such termination. The Company determines when your Service terminates for all purposes under this Agreement.

You acknowledge and agree that the vesting schedule set forth in the Notice of Grant may change prospectively in the event that your service status changes between full and part-time status in accordance with Company policies relating to work schedules and vesting of awards. You acknowledge that the vesting of the SARs pursuant to this Agreement is earned only by continuing Service.

(b) Death; Disability. If you die before your Service terminates (or you die within three months of your termination of Service other than for Cause), then this SAR will expire at the close of business at Company headquarters on the date 12 months after the date of death (subject to the expiration detailed in Section 5 or as provided in the Plan). If your Service terminates because of your Disability, then this SAR will expire at the close of business at Company headquarters on the date 12 months after your termination date (subject to the expiration detailed in Section 5 or as provided in the Plan).

(c) No Notice. You are responsible for keeping track of these exercise periods following your termination of Service for any reason. The Company will not provide further notice of such periods. In no event shall this SAR be exercised later than the Expiration Date set forth in the Notice of Grant.

**3. Exercise of SAR**.

(a) Right to Exercise. Subject to the applicable provisions of the Plan and this Agreement, this SAR is exercisable during its term in accordance with the Vesting Schedule set forth in the Notice of Grant and the applicable provisions of the Plan and this Agreement. In the event of your death, Disability, or other cessation of Service, the exercisability of the SAR is governed by the applicable provisions of the Plan, the Notice of Grant and this Agreement. This SAR may not be exercised for a fraction of a Share.

(b) Method of Exercise. This SAR is exercisable by delivery of an exercise notice in a form specified by the Company (the "***Exercise Notice***"), which shall state the election to exercise the SAR, the number of Shares in respect of which the SAR is being exercised, and such other representations and agreements as may be required by the Company pursuant to the provisions of the Plan. The Exercise Notice shall be delivered in person, by mail, via electronic mail or facsimile or by other authorized method to the Secretary of the Company or other person designated by the Company. This SAR shall be deemed to be exercised upon receipt by the Company of a fully executed Exercise Notice and any applicable withholding of Tax-Related Items that are required to be withheld as detailed in Section 7 below.

(c) No Shares shall be issued pursuant to the exercise of this SAR unless such issuance and exercise complies with all relevant provisions of law and the requirements of any stock exchange or quotation service upon which the Shares are then listed. Assuming such compliance, for income tax purposes the exercised Shares shall be considered transferred to you on the date the SAR is exercised with respect to such exercised Shares.

**4. Non-Transferability of SAR**. This SAR may not be transferred in any manner other than by will or by the laws of descent or distribution or court order and may be exercised during your lifetime only by you unless otherwise permitted by the Committee on a case-by-case basis. The terms of the Plan and this Agreement shall be binding upon your executors, administrators, heirs, successors and assigns.

**5. Term of SAR**. This SAR shall in any event expire on the Expiration Date set forth in the Notice of Grant, which date is ten years after the Date of Grant. You are responsible for keeping track of the Expiration Date. The Company is not obligated to provide notice of the Expiration Date and you should not depend on the Company providing any such notice (even if such notices have been provided in the past or are provided in some but not all circumstances).

**6. Tax Consequences**. You should consult a tax adviser for tax consequences relating to this SAR in the jurisdiction in which you are subject to tax. YOU SHOULD CONSULT A TAX ADVISER BEFORE EXERCISING THIS SAR OR DISPOSING OF THE SHARES. You will not be allowed to exercise this SAR unless you make arrangements acceptable to the Company to pay Tax-Related Items that are required to be withheld as further described in Section 7 below.

**7. Responsibility for Taxes**. Regardless of any action the Company or, if different, your employer (the "***Employer***") takes with respect to any or all income tax, social insurance, payroll tax, fringe benefits tax, payment on account and other tax-related items related to your participation in the Plan and legally applicable to you ("***Tax-Related Items***"), you acknowledge that the ultimate liability for all Tax-Related Items is and remains your responsibility and may exceed the amount actually withheld by the Company or the Employer. You further acknowledge that the Company and the Employer (a) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of this SAR, including the grant, vesting or exercise of this SAR, the subsequent sale of Shares acquired pursuant to such exercise and the receipt of any dividends; and (b) do not commit to and are under no obligation to structure the terms of the grant or any aspect of the SAR to reduce or eliminate your liability for Tax-Related Items or achieve any particular tax result. You acknowledge that if you are subject to Tax-Related Items in more than one jurisdiction, the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

Prior to any relevant taxable or tax withholding event, as applicable, you shall pay or make adequate arrangements satisfactory to the Company and/or the Employer to satisfy any withholding obligation the Company and/or the Employer may have for Tax-Related Items. In this regard, you authorize the Company and/or the Employer, and their respective agents, at their discretion, to withhold all applicable Tax-Related Items from your wages or other cash compensation paid to you by the Company and/or the Employer or by one or a combination of the following methods: (a) payment by you to the Company or the Employer of an amount equal to the Tax-Related Items in cash, (b) having the Company withhold otherwise deliverable cash or Shares having a value equal to the Tax-Related Items to be withheld, (c) delivering to the Company already-owned Shares having a value equal to the Tax-Related Items to be withheld, (d) withholding from proceeds of the sale of the Shares either through a voluntary sale or through a mandatory sale arranged by the Company (on your

behalf and you hereby authorize such sale pursuant to this authorization), or (e) any other arrangement approved by the Company and permissible under applicable law; in all cases, under such rules as may be established by the Committee and in compliance with the Company's Insider Trading Policy and 10b5-1 Trading Plan Policy, if applicable; provided, however, that if you are a Section 16 officer of the Company under the Exchange Act, then the method of withholding shall be a mandatory sale under (d) above (unless the Committee shall establish an alternate method prior to the taxable or withholding event). You shall pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold as a result of your participation in the Plan or your issuance of Shares upon exercise of the SARs that cannot be satisfied by the means previously described.

Depending on the withholding method, the Company may withhold or account for Tax-Related Items by considering applicable statutory withholding rates or other applicable withholding rates, including up to the maximum applicable rate in which case you may receive a refund of any over-withheld amount in cash and will have no entitlement to the equivalent in Shares. If the obligation for Tax-Related Items is satisfied by withholding in Shares, for tax purposes, you are deemed to have been issued the full number of Shares subject to the vested SARs, notwithstanding that a number of the Shares are held back solely for the purpose of paying the Tax-Related Items.

Finally, you acknowledge that the Company has no obligation to deliver Shares or proceeds from the sale of Shares to you until you have satisfied the obligations in connection with the Tax-Related Items as described in this Section.

**8. Acknowledgement**. The Company and you agree that the SAR is granted under and governed by the Notice of Grant, this Agreement and the provisions of the Plan (incorporated herein by reference). You: (i) acknowledge receipt of a copy of the Plan and the Plan prospectus, (ii) represent that you have carefully read and are familiar with their provisions and the provisions of the Notice of Grant and this Agreement, and (iii) hereby accept the SAR subject to all of the terms and conditions set forth in this SAR Agreement and those set forth in the Plan and the Notice of Grant. You hereby agree to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions relating to the Plan, the Notice of Grant and the SAR Agreement.

**9. Entire Agreement; Enforcement of Rights**. This Agreement, the Plan and the Notice of Grant constitute the entire agreement and understanding of the parties relating to the subject matter herein and supersede all prior discussions between them. Any prior agreements, commitments or negotiations concerning this SAR are superseded. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing and signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.

**10. Compliance with Laws and Regulations**. The issuance of Shares will be subject to and conditioned upon compliance by the Company and you with all applicable state, federal and foreign laws and regulations and with all applicable requirements of any stock exchange or automated quotation system on which the Company's common stock may be listed or quoted at the time of such issuance or transfer. The Shares issued pursuant to this Agreement shall be endorsed with appropriate legends, if any, determined by the Company.

**11. Governing Law; Severability**. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of this Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of this Agreement shall be enforceable in accordance with its terms. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware,

without giving effect to principles of conflicts of law. For purposes of litigating any dispute that may arise directly or indirectly from the Plan, the Notice of Grant and this Agreement, the parties hereby submit and consent to litigation in the exclusive jurisdiction of the State of California and agree that any such litigation shall be conducted only in the courts of California in San Francisco County, California or the federal courts of the United States for the State of California and no other courts.

**12. No Rights as Employee, Director or Consultant**. Nothing in this Agreement shall affect in any manner whatsoever the right or power of the Company, or a Parent, Subsidiary or Affiliate of the Company, to terminate your Service, for any reason, with or without Cause.

**13. Consent to Electronic Delivery and Acceptance of All Plan Documents and Disclosures**. By your acceptance of this SAR, you consent to the electronic delivery of the Notice of Grant, this Agreement, the Plan, account statements, Plan prospectuses required by the U.S. Securities and Exchange Commission, U.S. financial reports of the Company, and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements) or other communications or information related to the SAR. Electronic delivery may include the delivery of a link to a Company intranet or the internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other delivery determined at the Company's discretion. You acknowledge that you may receive from the Company a paper copy of any documents delivered electronically at no cost if you contact the Company by telephone, through a postal service or electronic mail at [insert email]. You further acknowledge that you will be provided with a paper copy of any documents delivered electronically if electronic delivery fails; similarly, you understand that you must provide on request to the Company or any designated third party a paper copy of any documents delivered electronically if electronic delivery fails. You agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company. Also, you understand that your consent may be revoked or changed, including any change in the electronic mail address to which documents are delivered (if you have provided an electronic mail address), at any time by notifying the Company of such revised or revoked consent by telephone, postal service or electronic mail at [insert email]. Finally, you understand that you are not required to consent to electronic delivery.

**14. Award Subject to Company Clawback or Recoupment**. To the extent permitted by applicable law, the SAR shall be subject to clawback or recoupment pursuant to any compensation clawback or recoupment policy adopted by the Board or the Committee or required by law during the term of your employment or other Service that is applicable to you. In addition to any other remedies available under such policy, applicable law may require the cancellation of your SAR (whether vested or unvested) and the recoupment of any gains realized with respect to your SAR.

BY ACCEPTING THIS SAR, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS DESCRIBED ABOVE AND IN THE PLAN.

**DAY ONE BIOPHARMACEUTICALS, INC.**
**2021 EMPLOYEE STOCK PURCHASE PLAN**

**1. PURPOSE.** Day One Biopharmaceuticals, Inc. adopted the Plan effective as of the Effective Date. The purpose of this Plan is to provide eligible employees of the Company and the Participating Corporations with a means of acquiring an equity interest in the Company, to enhance such employees' sense of participation in the affairs of the Company. Capitalized terms not defined elsewhere in the text are defined in Section 28.

**2. ESTABLISHMENT OF PLAN.** The Company proposes to grant rights to purchase shares of Common Stock to eligible employees of the Company and its Participating Corporations pursuant to this Plan. The Company intends this Plan to qualify as an "employee stock purchase plan" under Section 423 of the Code (including any amendments to or replacements of such Section), and this Plan shall be so construed, although the Company makes no undertaking or representation to maintain such qualification. Any term not expressly defined in this Plan but defined for purposes of Section 423 of the Code shall have the same definition herein. In addition, with regard to offers of options to purchase shares of Common Stock under the Plan to employees working for a Subsidiary or an Affiliate outside the United States, this Plan authorizes the grant of options under a Non-Section 423 Component that is not intended to meet Section 423 requirements, provided, to the extent necessary under Section 423 of the Code, the other terms and conditions of the Plan are met.

Subject to Section 14, a total shares of Common Stock is reserved for issuance under this Plan. In addition, on each January 1 of each of 2022 through 2031, the aggregate number of shares of Common Stock reserved for issuance under the Plan shall be increased automatically by the number of shares equal to of the number of shares of all classes of the Company's common stock, plus the total number of shares of Company common stock issuable upon conversion of any preferred stock or exercise of any Pre-Funded Warrants issued and outstanding on each December 31 (rounded down to the nearest whole share); provided, that the Board or the Committee may in its sole discretion reduce the amount of the increase in any particular year. Subject to Section 14, no more than shares of Common Stock may be issued over the term of this Plan. The number of shares initially reserved for issuance under this Plan and the maximum number of shares that may be issued under this Plan shall be subject to adjustments effected in accordance with Section 14. Any or all such shares may be granted under the Section 423 Component.

**3. ADMINISTRATION.** The Plan will be administered by the Committee. Subject to the provisions of this Plan and the limitations of Section 423 of the Code or any successor provision in the Code, all questions of interpretation or application of this Plan shall be determined by the Committee and its decisions shall be final and binding upon all eligible employees and Participants. The Committee will have full and exclusive discretionary authority to construe, interpret and apply the terms of the Plan, to determine eligibility, to designate the Participating Corporations, to determine whether Participating Corporations shall participate in the Section 423 Component or Non-Section 423 Component and to decide upon any and all claims filed under the Plan. Every finding, decision and determination made by the Committee

will, to the full extent permitted by law, be final and binding upon all parties. Notwithstanding any provision to the contrary in this Plan, the Committee may adopt rules, sub-plans, and/or procedures relating to the operation and administration of the Plan designed to comply with local laws, regulations or customs or to achieve tax, securities law or other objectives for eligible employees outside of the United States. The Committee will have the authority to determine the Fair Market Value of the Common Stock (which determination shall be final, binding and conclusive for all purposes) in accordance with Section 8 below and to interpret Section 8 of the Plan in connection with circumstances that impact the Fair Market Value. Members of the Committee shall receive no compensation for their services in connection with the administration of this Plan, other than standard fees as established from time to time by the Board for services rendered by Board members serving on Board committees. All expenses incurred in connection with the administration of this Plan shall be paid by the Company. For purposes of this Plan, the Committee may designate separate offerings under the Plan (the terms of which need not be identical) in which eligible employees of one or more Participating Corporations will participate, and the provisions of the Plan will separately apply to each such separate offering even if the dates of the applicable Offering Periods of each such offering are identical. To the extent permitted by Section 423 of the Code, the terms of each separate offering under the Plan need not be identical, provided that the rights and privileges established with respect to a particular offering are applied in an identical manner to all employees of every Participating Corporation whose employees are granted options under that particular offering. The Committee may establish rules to govern the terms of the Plan and the offering that will apply to Participants who transfer employment between the Company and Participating Corporations or between Participating Corporations, in accordance with requirements under Section 423 of the Code to the extent applicable.

**4. ELIGIBILITY.**

(a) Any employee of the Company or the Participating Corporations is eligible to participate in an Offering Period under this Plan, except that one or more of the following categories of employees may be excluded from coverage under the Plan if determined by the Committee (other than where such exclusion is prohibited by applicable law):

(i) employees who do not meet eligibility requirements that the Committee may choose to impose (within the limits permitted by the Code);

(ii) employees who are not employed by the Company or a Participating Corporation prior to the beginning of such Offering Period or prior to such other time period as specified by the Committee;

(iii) employees who are customarily employed for twenty (20) or less hours per week;

(iv) employees who are customarily employed for five (5) months or less in a calendar year;

(v) (a) employees who are "highly compensated employees" of the Company or any Participating Corporation (within the meaning of Section 414(q) of the Code), or (b) any employees who are "highly compensated employees" with compensation above a specified level, who is an officer and/or is subject to the disclosure requirements of Section 16(a) of the Exchange Act;

(vi) employees who are citizens or residents of a foreign jurisdiction (without regard to whether they are also a citizen of the United States or a resident alien (within the meaning of Section 7701(b)(1)(A) of the Code)) if either (i) such employee's participation is prohibited under the laws of the jurisdiction governing such employee, or (ii) compliance with the laws of the foreign jurisdiction would violate the requirements of Section 423 of the Code; and

(vii) individuals who provide services to the Company or any of its Participating Corporations who are reclassified as common law employees for any reason except for federal income and employment tax purposes.

The foregoing notwithstanding, an individual shall not be eligible if his or her participation in the Plan is prohibited by the law of any country that has jurisdiction over him or her, if complying with the laws of the applicable country would cause the Plan to violate Section 423 of the Code, or if he or she is subject to a collective bargaining agreement that does not provide for participation in the Plan.

(b) No employee who, together with any other person whose stock would be attributed to such employee pursuant to Section 424(d) of the Code, owns stock or holds options to purchase stock possessing five percent (5%) or more of the total combined voting power or value of all classes of stock of the Company or its Parent or Subsidiary or who, as a result of being granted an option under this Plan with respect to such Offering Period, would own stock or hold options to purchase stock possessing five percent (5%) or more of the total combined voting power or value of all classes of stock of the Company or its Parent or Subsidiary shall be granted an option to purchase Common Stock under the Plan. Notwithstanding the foregoing, the rules of Section 424(d) of the Code shall apply in determining share ownership and the extent to which shares held under outstanding equity awards are to be treated as owned by the employee.

**5. OFFERING DATES.**

(a) Each Offering Period of this Plan may be of up to twenty-seven (27) months duration and shall commence and end at the times designated by the Committee. Each Offering Period shall consist of one or more Purchase Periods during which Contributions made by Participants are accumulated under this Plan.

(b) The initial Offering Period shall commence on the Effective Date and shall end with the Purchase Date that occurs on a date selected by the Committee which is approximately six (6) months after the commencement of the initial Offering Period, but no more than twenty-seven (27) months after the commencement of the initial Offering period. The initial Offering Period shall consist of one Purchase Period. Thereafter, a new Offering Period shall commence on each May 15 and November 15, with each such Offering Period also consisting of a six (6)-month Purchase Period, except as otherwise provided by an applicable sub-plan, or on such other date determined by the Committee. The Committee may at any time establish a different duration for an Offering Period or Purchase Period to be effective after the next scheduled Purchase Date, up to a maximum duration of twenty-seven (27) months.

**6. PARTICIPATION IN THIS PLAN.**

(a) Any employee who is an eligible employee determined in accordance with Section 4 immediately prior to the initial Offering Period will be automatically enrolled in the initial Offering Period under this Plan for the maximum number of shares of Common Stock purchasable. With respect to subsequent Offering Periods, any eligible employee determined in accordance with Section 4 will be eligible to participate in this Plan, subject to the requirement of Section 6(b) hereof and the other terms and provisions of this Plan.

(b) With respect to Offering Periods after the initial Offering Period, a Participant may elect to participate in this Plan by submitting an enrollment agreement prior to the commencement of the Offering Period (or such earlier date as the Committee may determine) to which such agreement relates.

(c) Once an employee becomes a Participant in an Offering Period, then such Participant will automatically participate in each subsequent Offering Period commencing immediately following the last day of the prior Offering Period unless the Participant withdraws or is deemed to withdraw from this Plan or terminates further participation in an Offering Period as set forth in Section 11 below. A Participant who is continuing participation pursuant to the preceding sentence is not required to file any additional enrollment agreement in order to continue participation in this Plan; a Participant who is not continuing participation pursuant to the preceding sentence is required to file an enrollment agreement prior to the commencement of the Offering Period (or such earlier date as the Committee may determine) to which such agreement relates.

**7. GRANT OF OPTION ON ENROLLMENT.** Becoming a Participant with respect to an Offering Period will constitute the grant (as of the Offering Date) by the Company to such Participant of an option to purchase on the Purchase Date up to that number of shares of Common Stock determined by a fraction, the numerator of which is the amount accumulated in such Participant's Contribution account during such Purchase Period and the denominator of which is the lower of (i) eighty-five percent (85%) of the Fair Market Value of a share of Common Stock on the Offering Date (but in no event less than the par value of a share of the Common Stock), or (ii) eighty-five percent (85%) of the Fair Market Value of a share of the Common Stock on the Purchase Date; provided, however, that for the Purchase Period within the initial Offering Period the numerator shall be fifteen percent (15%) of the Participant's compensation for such Purchase Period, or such lower percentage as determined by the Committee prior to the start of the Offering Period, and provided, further, that the number of shares of Common Stock subject to any option granted pursuant to this Plan shall not exceed the lesser of (x) the maximum number of shares set by the Committee pursuant to Section 10(b) below with respect to the applicable Purchase Date, or (y) the maximum number of shares which may be purchased pursuant to Section 10(a) below with respect to the applicable Purchase Date.

**8. PURCHASE PRICE.** The Purchase Price per share at which a share of Common Stock will be sold in any Offering Period shall be eighty-five percent (85%) of the lesser of:

(a) The Fair Market Value on the Offering Date; or

(b) The Fair Market Value on the Purchase Date.

**9. PAYMENT OF PURCHASE PRICE; CONTRIBUTION CHANGES; SHARE ISSUANCES.**

(a) The Purchase Price shall be accumulated by regular payroll deductions made during each Offering Period, unless the Committee determines that contributions may be made in another form (including but not limited to with respect to categories of Participants outside the United States that Contributions may be made in another form due to local legal requirements). The Contributions are made as a percentage of the Participant's Compensation in one percent (1%) increments not less than one percent (1%), nor greater than fifteen percent (15%) or such lower limit set by the Committee. "***Compensation***" shall mean base salary or regular hourly wages; however, the Committee shall have discretion to adopt a definition of Compensation from time to time of all cash compensation reported on the employee's Form W-2 or corresponding local country tax return, including without limitation base salary or regular hourly wages, bonuses, incentive compensation, commissions, overtime, shift premiums, pay during leaves of absence, and draws against commissions (or in foreign jurisdictions, equivalent cash compensation). For purposes of determining a Participant's Compensation, any election by such Participant to reduce his or her regular cash remuneration under Sections 125 or 401(k) of the Code (or in foreign jurisdictions, equivalent deductions) shall be treated as if the Participant did not make such election. Contributions shall commence on the first payday following the last Purchase Date (with respect to the initial Offering Period, as soon as practicable following the effective date of filing with the U.S. Securities and Exchange Commission a securities registration statement for the Plan) and shall continue to the end of the Offering Period unless sooner altered or terminated as provided in this Plan. Notwithstanding the foregoing, the terms of any sub-plan may permit matching shares without the payment of any purchase price.

(b) A Participant may decrease the rate of Contributions during an Offering Period by filing with the Company or a third party designated by the Company a new authorization for Contributions, with the new rate to become effective no later than the second payroll period commencing after the Company's receipt of the authorization and continuing for the remainder of the Offering Period unless changed as described below. A decrease in the rate of Contributions may be made twice during the initial Offering Period and once during any subsequent Offering Periods, or more frequently under rules determined by the Committee. A Participant may increase or decrease the rate of Contributions for any subsequent Offering Period by filing with the Company or a third party designated by the Company a new authorization for Contributions prior to the beginning of such Offering Period, or such other time period as specified by the Committee.

(c) A Participant may reduce his or her Contribution percentage to zero during an Offering Period by filing with the Company or a third party designated by the Company a request for cessation of Contributions. Such reduction shall be effective beginning no later than the second payroll period after the Company's receipt of the request and no further Contributions will be made for the duration of the Offering Period. Contributions credited to the Participant's account prior to the effective date of the request shall be used to purchase shares of Common Stock in accordance with Subsection (e) below. A reduction of the Contribution percentage to zero shall be treated as such Participant's withdrawal from such Offering Period and the Plan, effective as of the day after the next Purchase Date following the filing date of such request with the Company.

(d) All Contributions made for a Participant are credited to his or her book account under this Plan and are deposited with the general funds of the Company, except to the extent local legal restrictions outside the United States require segregation of such Contributions. No interest accrues on the Contributions, except to the extent required due to local legal requirements. All Contributions received or held by the Company may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate such Contributions, except to the extent necessary to comply with local legal requirements outside the United States.

(e) On each Purchase Date, so long as this Plan remains in effect and provided that the Participant has not submitted a signed and completed withdrawal form before that date which notifies the Company that the Participant wishes to withdraw from that Offering Period under this Plan and have all Contributions accumulated in the account maintained on behalf of the Participant as of that date returned to the Participant, the Company shall apply the funds then in the Participant's account to the purchase of whole shares of Common Stock reserved under the option granted to such Participant with respect to the Offering Period to the extent that such option is exercisable on the Purchase Date. The Purchase Price per share shall be as specified in Section 8 of this Plan. Any fractional share, as calculated under this Subsection (e), shall be rounded down to the next lower whole share, unless the Committee determines with respect to all Participants that any fractional share shall be credited as a fractional share. Any amount remaining in a Participant's account on a Purchase Date which is less than the amount necessary to purchase a full share of Common Stock will be carried forward into the next Purchase Period or Offering Period, as the case may be (except to the extent required due to local legal requirements outside the United States), unless otherwise required to be refunded or returned to Participant pursuant to this Section 9(e), Section 10(d), Section 11(b), Section 12, Section 13, or as otherwise provided by this Plan; provided, however, the Committee may determine for future Offering Periods that such amounts shall be carried forward without interest (except to the extent necessary to comply with local legal requirements outside the United States) into the next Purchase Period. In the event that this Plan has been oversubscribed, all funds not used to purchase shares on the Purchase Date shall be returned to the Participant, without interest (except to the extent required due to local legal requirements outside the United States). No Common Stock shall be purchased on a Purchase Date on behalf of any employee whose participation in this Plan has terminated prior to such Purchase Date, except to the extent required due to local legal requirements outside the United States.

(f) As promptly as practicable after the Purchase Date, the Company shall issue shares for the Participant's benefit representing the shares purchased upon exercise of his or her option.

(g) During a Participant's lifetime, his or her option to purchase shares hereunder is exercisable only by him or her. The Participant will have no interest or voting right in shares covered by his or her option until such option has been exercised.

(h) To the extent required by applicable federal, state, local or foreign law, a Participant shall make arrangements satisfactory to the Company and the Participating Corporation employing the Participant for the satisfaction of any withholding tax obligations that arise in connection with the Plan. The Company or any Subsidiary or Affiliate, as applicable, may withhold, by any method permissible under the applicable law, the amount necessary for the Company or Subsidiary or Affiliate, as applicable, to meet applicable withholding obligations, including any withholding required to make available to the Company or Subsidiary or Affiliate, as applicable, any tax deductions or benefits attributable to the sale or early disposition of shares of Common Stock by a Participant. The Company shall not be required to issue any shares of Common Stock under the Plan until such obligations are satisfied.

**10. LIMITATIONS ON SHARES TO BE PURCHASED.**

(a) Any other provision of the Plan notwithstanding, no Participant shall purchase Common Stock with a Fair Market Value in excess of the following limit:

(i) In the case of Common Stock purchased during an Offering Period that commenced in the current calendar year, the limit shall be equal to (A) $25,000 minus (B) the Fair Market Value of the Common Stock that the Participant previously purchased in the current calendar year (under this Plan and all other employee stock purchase plans of the Company or any Parent or Subsidiary).

(ii) In the case of Common Stock purchased during an Offering Period that commenced in the immediately preceding calendar year, the limit shall be equal to (A) $50,000 minus (B) the Fair Market Value of the Common Stock that the Participant previously purchased (under this Plan and all other employee stock purchase plans of the Company or any Parent or Subsidiary) in the current calendar year and in the immediately preceding calendar year.

(iii) In the case of Common Stock purchased during an Offering Period that commenced two calendar years prior, the limit shall be equal to (A) $75,000 minus (B) the Fair Market Value of the Common Stock that the Participant previously purchased (under this Plan and all other employee stock purchase plans of the Company or any Parent or Subsidiary) in the current calendar year and in the two immediately preceding calendar years.

For purposes of this Subsection (a), the Fair Market Value of Common Stock shall be determined in each case as of the beginning of the Offering Period in which such Common Stock is purchased. Employee stock purchase plans not described in Section 423 of the Code shall be disregarded. If a Participant is precluded by this Subsection (a) from purchasing additional Common Stock under the Plan, then his or her Contributions shall automatically be discontinued and shall automatically resume at the beginning of the earliest Purchase Period that will end in the next calendar year (if he or she then is an eligible employee), provided that when the Company automatically resumes such Contributions, the Company must apply the rate in effect immediately prior to such suspension.

(b) In no event shall a Participant be permitted to purchase more than 2,500 shares on any one Purchase Date or such lesser number as the Committee shall determine. If a lower limit is set under this Subsection (b), then all Participants will be notified of such limit prior to the commencement of the next Offering Period for which it is to be effective.

(c) If the number of shares to be purchased on a Purchase Date by all Participants exceeds the number of shares then available for issuance under this Plan, then the Company will make a pro rata allocation of the remaining shares in as uniform a manner as shall be reasonably practicable and as the Committee shall determine to be equitable. In such event, the Company will give notice of such reduction of the number of shares to be purchased under a Participant's option to each Participant affected.

(d) Any Contributions accumulated in a Participant's account which are not used to purchase stock due to the limitations in this Section 10, and not covered by Section 9(e), shall be returned to the Participant as soon as practicable after the end of the applicable Purchase Period, without interest (except to the extent required due to local legal requirements outside the United States).

**11. WITHDRAWAL.**

(a) Each Participant may withdraw from an Offering Period under this Plan pursuant to a method specified for such purpose by the Company. Such withdrawal may be elected at any time prior to the end of an Offering Period, or such other time period as specified by the Committee.

(b) Upon withdrawal from this Plan, the accumulated Contributions shall be returned to the withdrawn Participant, without interest (except to the extent required due to local legal requirements outside the United States), and his or her interest in this Plan shall terminate. In the event a Participant voluntarily elects to withdraw from this Plan, he or she may not resume his or her participation in this Plan during the same Offering Period, but he or she may participate in any Offering Period under this Plan which commences on a date subsequent to such withdrawal by filing a new authorization for Contributions in the same manner as set forth in Section 6 above for initial participation in this Plan.

(a) To the extent applicable, if the Fair Market Value on the first day of the current Offering Period in which a Participant is enrolled is higher than the Fair Market Value on the last day of any applicable Purchase Period, (1) the Company will automatically withdraw the Participant from the prior Offering Period and the Participant will be automatically enrolled in a new Offering Period, (2) the old Offering Period is terminated, (3) the new Offering Period will be coterminous with the originally scheduled termination date of the old Offering Period, unless otherwise determined by the Committee, and (4) any funds accumulated in a Participant's account prior to the first day of such new Offering Period will be applied to the purchase of shares on the Purchase Date preceding the first day of such new Offering Period.

**12. TERMINATION OF EMPLOYMENT.** Termination of a Participant's employment for any reason, including retirement, death, disability, or the failure of a Participant to remain an eligible employee of the Company or of a Participating Corporation, immediately terminates his or her participation in this Plan (except as required due to local legal requirements outside the United States). In such event, accumulated Contributions credited to the Participant's account will be returned to him or her or, in the case of his or her death, to his or her legal representative, without interest (except to the extent required due to local legal requirements outside the United States). For purposes of this Section 12, an employee will not be deemed to have terminated employment or failed to remain in the continuous employ of the Company or of a Participating Corporation in the case of sick leave, military leave, or any other leave of absence approved by the Company; provided that such leave is for a period of not more than ninety (90) days or reemployment upon the expiration of such leave is guaranteed by contract or statute. The Company will have sole discretion to determine whether a Participant has terminated employment and the effective date on which the Participant terminated employment, regardless of any notice period or garden leave required under local law.

**13. RETURN OF CONTRIBUTIONS.** In the event a Participant's interest in this Plan is terminated by withdrawal, termination of employment or otherwise, or in the event this Plan is terminated by the Board, the Company shall deliver to the Participant all accumulated Contributions credited to such Participant's account. No interest shall accrue on the Contributions of a Participant in this Plan (except to the extent required due to local legal requirements outside the United States).

**14. CAPITAL CHANGES.** If the number and class of outstanding shares is changed by a stock dividend, recapitalization, stock split, reverse stock split, subdivision, combination, reclassification or similar change in the capital structure of the Company, without consideration, then the Committee shall adjust the number and class of Common Stock that may be delivered under the Plan, the Purchase Price per share and the number of shares of Common Stock covered by each option under the Plan which has not yet been exercised, and the numerical limits of Sections 2 and 10 shall be proportionately adjusted, subject to any required action by the Board or the stockholders of the Company and in compliance with the applicable securities laws; provided that fractions of a share will not be issued.

**15. NONASSIGNABILITY.** Neither Contributions credited to a Participant's account nor any rights with regard to the exercise of an option or to receive shares under this Plan may be assigned, transferred, pledged or otherwise disposed of in any way (other than by will, the laws of descent and distribution or as provided in Section 22 below) by the Participant. Any such attempt at assignment, transfer, pledge or other disposition shall be void and without effect.

**16. USE OF PARTICIPANT FUNDS AND REPORTS.** The Company may use all Contributions received or held by it under the Plan for any corporate purpose, and the Company will not be required to segregate Participant Contributions (except to the extent required due to local legal requirements outside the United States). Until shares are issued, Participants will only have the rights of an unsecured creditor unless otherwise required under local law. Each Participant shall receive, or have access to, promptly after the end of each Purchase Period a report of his or her account setting forth the total Contributions accumulated, the number of shares purchased, the per share price thereof and the remaining cash balance, if any, carried forward to the next Purchase Period or Offering Period, as the case may be.

**17. NOTICE OF DISPOSITION.** Each U.S. taxpayer Participant shall notify the Company in writing if the Participant disposes of any of the shares purchased in any Offering Period pursuant to this Plan if such disposition occurs within two (2) years from the Offering Date or within one (1) year from the Purchase Date on which such shares were purchased (the "***Notice Period***"). The Company may, at any time during the Notice Period, place a legend or legends on any certificate representing shares acquired pursuant to this Plan requesting the Company's transfer agent to notify the Company of any transfer of the shares. The obligation of the Participant to provide such notice shall continue notwithstanding the placement of any such legend on the certificates.

**18. NO RIGHTS TO CONTINUED EMPLOYMENT.** Neither this Plan nor the grant of any option hereunder shall confer any right on any employee to remain in the employ of the Company or any Participating Corporation, or restrict the right of the Company or any Participating Corporation to terminate such employee's employment.

**19. EQUAL RIGHTS AND PRIVILEGES.** All eligible employees granted an option under the Section 423 Component of this Plan shall have equal rights and privileges with respect to this Plan or within any separate offering under the Plan so that this Plan qualifies as an "employee stock purchase plan" within the meaning of Section 423 or any successor provision of the Code and the related regulations. Any provision of this Plan which is inconsistent with Section 423 or any successor provision of the Code, without further act or amendment by the Company, the Committee or the Board, shall be reformed to comply with the requirements of Section 423. This Section 19 shall take precedence over all other provisions in this Plan.

**20. NOTICES.** All notices or other communications by a Participant to the Company under or in connection with this Plan shall be deemed to have been duly given when received in the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

**21. TERM; STOCKHOLDER APPROVAL.** This Plan will become effective on the Effective Date. This Plan shall be approved by the stockholders of the Company, in any manner permitted by applicable corporate law, within twelve (12) months before or after the date this Plan is adopted by the Board. No purchase of shares that are subject to such stockholder approval before becoming available under this Plan shall occur prior to stockholder approval of such shares and the Board or Committee may delay any Purchase Date and postpone the commencement of any Offering Period subsequent to such Purchase Date as deemed necessary or desirable to obtain such approval (provided that if a Purchase Date would occur more than six (6) months after commencement of the Offering Period to which it relates, then such Purchase Date shall not occur and instead such Offering Period shall terminate without the purchase of such shares and Participants in such Offering Period shall be refunded their Contributions without interest). This Plan shall continue until the earlier to occur of (a) termination of this Plan by the Board (which termination may be effected by the Board at any time pursuant to Section 25 below), (b) issuance of all of the shares of Common Stock reserved for issuance under this Plan, or (c) the tenth anniversary of the Effective Date.

**22. DESIGNATION OF BENEFICIARY.**

(a) If authorized by the Committee, a Participant may file a written designation of a beneficiary who is to receive any cash from the Participant's account under this Plan in the event of such Participant's death prior to a Purchase Date. Such form shall be valid only if it was filed with the Company at the prescribed location before the Participant's death.

(b) If authorized by the Company, such designation of beneficiary may be changed by the Participant at any time by written notice filed with the Company at the prescribed location before the Participant's death. In the event of the death of a Participant and in the absence of a beneficiary validly designated under this Plan who is living at the time of such Participant's death, the Company shall deliver such cash to the executor or administrator of the estate of the Participant or to the legal heirs of the Participant.

**23. CONDITIONS UPON ISSUANCE OF SHARES; LIMITATION ON SALE OF SHARES.** Shares shall not be issued with respect to an option unless the exercise of such option and the issuance and delivery of such shares pursuant thereto shall comply with all applicable provisions of law, domestic or foreign, including, without limitation, the U.S. Securities Act of 1933, as amended, the Exchange Act, the rules and regulations promulgated thereunder, and the requirements of any stock exchange or automated quotation system upon which the shares may then be listed, exchange control restrictions and/or securities law restrictions outside the United States, and shall be further subject to the approval of counsel for the Company with respect to such compliance. Shares may be held in trust or subject to further restrictions as permitted by any subplan.

**24. APPLICABLE LAW.** The Plan shall be governed by the substantive laws (excluding the conflict of laws rules) of the State of Delaware.

**25. AMENDMENT OR TERMINATION.** The Committee, in its sole discretion, may amend, suspend, or terminate the Plan, or any part thereof, at any time and for any reason. Unless otherwise required by applicable law, if the Plan is terminated, the Committee, in its discretion, may elect to terminate all outstanding Offering Periods either immediately or upon completion of the purchase of shares of Common Stock on the next Purchase Date (which may be sooner than originally scheduled, if determined by the Committee in its discretion), or may elect to permit Offering Periods to expire in accordance with their terms (and subject to any adjustment pursuant to Section 14). If an Offering Period is terminated prior to its previously-scheduled expiration, all amounts then credited to Participants' accounts for such Offering Period, which have not been used to purchase shares of Common Stock, shall be returned to those Participants (without interest thereon, except as otherwise required under local laws) as soon as administratively practicable. Further, the Committee will be entitled to change the Purchase Periods and Offering Periods, limit the frequency and/or number of changes in the amount contributed during an Offering Period, establish the exchange ratio applicable to amounts contributed in a currency other than U.S. dollars, permit payroll withholding in excess of the amount designated by a Participant in order to adjust for delays or mistakes in the administration of the Plan, establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Common Stock for each Participant properly correspond with amounts contributed from the

Participant's base salary and other eligible compensation, and establish such other limitations or procedures as the Committee determines in its sole discretion advisable which are consistent with the Plan. Such actions will not require stockholder approval or the consent of any Participants. However, no amendment shall be made without approval of the stockholders of the Company (obtained in accordance with Section 21 above) within twelve (12) months of the adoption of such amendment (or earlier if required by Section 21) if such amendment would: (a) increase the number of shares that may be issued under this Plan; or (b) change the designation of the employees (or class of employees) eligible for participation in this Plan. In addition, in the event the Board or Committee determines that the ongoing operation of the Plan may result in unfavorable financial accounting consequences, the Board or Committee may, in its discretion and, to the extent necessary or desirable, modify, amend or terminate the Plan to reduce or eliminate such accounting consequences including, but not limited to: (i) amending the definition of compensation, including with respect to an Offering Period underway at the time; (ii) altering the Purchase Price for any Offering Period including an Offering Period underway at the time of the change in Purchase Price; (iii) shortening any Offering Period by setting a Purchase Date, including an Offering Period underway at the time of the Committee's action; (iv) reducing the maximum percentage of Compensation a participant may elect to set aside as Contributions; and (v) reducing the maximum number of shares a Participant may purchase during any Offering Period. Such modifications or amendments will not require approval of the stockholders of the Company or the consent of any Participants.

**26. CORPORATE TRANSACTIONS.** In the event of a Corporate Transaction, the Offering Period for each outstanding right to purchase Common Stock will be shortened by setting a new Purchase Date and will end on the new Purchase Date. The new Purchase Date shall occur on or prior to the consummation of the Corporate Transaction, as determined by the Board or Committee, and the Plan shall terminate on the consummation of the Corporate Transaction.

**27. CODE SECTION 409A; TAX QUALIFICATION.**

(a) Options granted under the Plan generally are exempt from the application of Section 409A of the Code. However, options granted to U.S. taxpayers which are not intended to meet the Code Section 423 requirements are intended to be exempt from the application of Section 409A of the Code under the short-term deferral exception and any ambiguities shall be construed and interpreted in accordance with such intent. Subject to Subsection (b), options granted to U.S. taxpayers outside of the Code Section 423 requirements shall be subject to such terms and conditions that will permit such options to satisfy the requirements of the short-term deferral exception available under Section 409A of the Code, including the requirement that the shares of Common Stock subject to an option be delivered within the short-term deferral period. Subject to Subsection (b), in the case of a Participant who would otherwise be subject to Section 409A of the Code, to the extent the Committee determines that an option or the exercise, payment, settlement or deferral thereof is subject to Section 409A of the Code, the option shall be granted, exercised, paid, settled or deferred in a manner that will comply with Section 409A of the Code, including Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the Effective Date. Notwithstanding the foregoing, the Company shall have no liability to a Participant or any other party if the option that is intended to be exempt from or compliant with Section 409A of the Code is not so exempt or compliant or for any action taken by the Committee with respect thereto.

(b) Although the Company may endeavor to (i) qualify an option for favorable tax treatment under the laws of the United States or jurisdictions outside of the United States or (ii) avoid adverse tax treatment (*e.g.*, under Section 409A of the Code), the Company makes no representation to that effect and expressly disavows any covenant to maintain favorable or avoid unfavorable tax treatment, notwithstanding anything to the contrary in this Plan, including Subsection (a). The Company shall be unconstrained in its corporate activities without regard to the potential negative tax impact on Participants under the Plan.

**28. DEFINITIONS.**

(a) "***Affiliate***" means any entity, other than a Subsidiary or Parent, (i) that, directly or indirectly, is controlled by, controls or is under common control with, the Company and (ii) in which the Company has a significant equity interest, in either case as determined by the Committee, whether now or hereafter existing.

(b) "***Board***" shall mean the Board of Directors of the Company.

(c) "***Code***" shall mean the U.S. Internal Revenue Code of 1986, as amended.

(d) "***Committee***" shall mean the Compensation Committee of the Board that consists exclusively of one or more members of the Board appointed by the Board.

(e) "***Common Stock***" shall mean the common stock of the Company.

(f) "***Company***" shall mean Day One Biopharmaceuticals, Inc.

(g) "***Contributions***" means payroll deductions taken from a Participant's Compensation and used to purchase shares of Common Stock under the Plan and, to the extent payroll deductions are not permitted by applicable laws (as determined by the Committee in its sole discretion) contributions by other means, provided, however, that allowing such other contributions does not jeopardize the qualification of the Plan as an "employee stock purchase plan" under Section 423 of the Plan.

(h) "***Corporate Transaction***" means the occurrence of any of the following events: (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company's then outstanding voting securities; or (ii) the consummation of the sale or disposition by the Company of all or substantially all of the Company's assets; or (iii) the consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation.

(i) "***Effective Date***" shall mean the date on which the Registration Statement covering the initial public offering of the shares of Common Stock is declared effective by the U.S. Securities and Exchange Commission.

(j) "***Exchange Act***" means the U.S. Securities Exchange Act of 1934, as amended.

(k) "***Fair Market Value***" shall mean, as of any date, the value of a share of Common Stock determined as follows:

(1) if such Common Stock is then quoted on the Nasdaq Global Select Market, the Nasdaq Global Market or the Nasdaq Capital Market (collectively, the "***Nasdaq Market***"), its closing price on the Nasdaq Market on the date of determination, or if there are no sales for such date, then the last preceding business day on which there were sales, as reported in *The Wall Street Journal* or such other source as the Board or the Committee deems reliable;

(2) if such Common Stock is publicly traded and is then listed on a national securities exchange, its closing price on the date of determination on the principal national securities exchange on which the Common Stock is listed or admitted to trading as reported in *The Wall Street Journal* or such other source as the Board or the Committee deems reliable;

(3) if such Common Stock is publicly traded but is neither quoted on the Nasdaq Market nor listed or admitted to trading on a national securities exchange, the average of the closing bid and asked prices on the date of determination as reported in *The Wall Street Journal* or such other source as the Board or the Committee deems reliable;

(4) with respect to the initial Offering Period, Fair Market Value on the Offering Date shall be the price at which shares of Common Stock are offered to the public pursuant to the Registration Statement covering the initial public offering of shares of Common Stock; or

(5) if none of the foregoing is applicable, by the Board or the Committee in good faith.

(l) "***Non-Section 423 Component***" means the part of the Plan which is not intended to meet the requirements set forth in Section 423 of the Code.

(m) "***Notice Period***" shall mean within two (2) years from the Offering Date or within one (1) year from the Purchase Date on which such shares were purchased.

(n) "***Offering Date***" shall mean the first business day of each Offering Period. However, for the initial Offering Period the Offering Date shall be the Effective Date.

(o) "***Offering Period***" shall mean a period with respect to which the right to purchase Common Stock may be granted under the Plan, as determined by the Committee pursuant to Section 5(a).

(p) "***Parent***" shall have the same meaning as "parent corporation" in Sections 424(e) and 424(f) of the Code.

(q) "***Participant***" shall mean an eligible employee who meets the eligibility requirements set forth in Section 4 and who is either automatically enrolled in the initial Offering Period or who elects to participate in this Plan pursuant to Section 6(b).

(r) "***Participating Corporation***" shall mean any Parent, Subsidiary or Affiliate that the Committee designates from time to time as eligible to participate in this Plan. For purposes of the Section 423 Component, only the Parent and Subsidiaries may be Participating Corporations, provided, however, that at any given time a Parent or Subsidiary that is a Participating Corporation under the Section 423 Component shall not be a Participating Corporation under the Non-Section 423 Component. The Committee may provide that any Participating Corporation shall only be eligible to participate in the Non-Section 423 Component.

(s) "***Plan***" shall mean this Day One Biopharmaceuticals, Inc. 2021 Employee Stock Purchase Plan, as may be amended from time to time.

(t) "***Pre-Funded Warrant***" mean any warrant to acquire shares of Company common stock for a nominal exercise price.

(u) "***Purchase Date***" shall mean the last business day of each Purchase Period.

(v) "***Purchase Period***" shall mean a period during which Contributions may be made toward the purchase of Common Stock under the Plan, as determined by the Committee pursuant to Section 5(b).

(w) "***Purchase Price***" shall mean the price at which Participants may purchase shares of Common Stock under the Plan, as determined pursuant to Section 8.

(x) "***Section 423 Component***" means the part of the Plan, which excludes the Non-Section 423 Component, pursuant to which options to purchase shares of Common Stock under the Plan that satisfy the requirements for "employee stock purchase plans" set forth in Section 423 of the Code may be granted to eligible employees.

(y) "***Subsidiary***" shall have the same meaning as "subsidiary corporation" in Sections 424(e) and 424(f) of the Code.

**DAY ONE BIOPHARMACEUTICALS, INC. (THE "COMPANY")**
**2021 EMPLOYEE STOCK PURCHASE PLAN**
*Capitalized terms used but not otherwise defined herein shall have the meaning given to them in the ESPP.*

**ENROLLMENT CONFIRMATION / CHANGE FORM**
***FOR INITIAL OFFERING PERIOD COMMENCING ON EFFECTIVE DATE***

**You have been automatically enrolled in the ESPP. This form must be completed by [DATE] regardless of whether you want to continue, change your contribution level, or withdraw from the ESPP.**

SECTION 1:

**PERSONAL DATA**

Name: _____

Home Address: _____

_____

Employee ID: _____

SECTION 2:

**ELECT/CHANGE/OPT-OUT OF ESPP**

**Continue participation in ESPP**

I hereby authorize the Company to continue my enrollment by withholding from each of my paychecks during each Purchase Period the below-specified percentage of my compensation, as long as I continue to participate in the ESPP.

☐ Continue my contribution level at 15%

☐ Decrease my contribution level to __% **(must be a whole number between 1% and 15%)**

Note: After this initial election, you may only decrease your contributions one time to a percentage other than 0% during this Offering Period, to be effective during this Offering Period. Such a change will be effective as soon as reasonably practicable after this form is received by the Company. Any other decreases will take effect with the next Offering Period. You may not increase your contributions during this Offering Period after you confirm your initial election. Thereafter, any increase in your contribution percentage can only take effect with the next Offering Period

**Withdraw from ESPP**

☐ I understand that my enrollment in the ESPP was automatically effective at the beginning of the initial Offering Period. I hereby elect to withdraw from the ESPP and stop my contributions under the ESPP, effective as soon as reasonably practicable after this form is received by the Company. Accumulated contributions will be returned to me without interest. **Note: If you withdraw, you cannot resume participation until the start of the next Offering Period**

SECTION 6:

**COMPLIANCE WITH LAW**

Unless there is an available exemption from any registration, qualification or other legal requirement applicable to the shares of Common Stock, the Company shall not be required to deliver any shares under the ESPP prior to the completion of any registration or qualification of the shares under any applicable law, or prior to obtaining any approval or other clearance from any local, state, federal or foreign governmental agency, which registration, qualification or approval the Company shall, in its absolute discretion, deem necessary or advisable. I agree that the Company shall have unilateral authority to amend the ESPP and this Agreement without my consent to the extent necessary to comply with securities or other laws applicable to the issuance of shares.

SECTION 7:

**NO ADVICE REGARDING GRANT**

The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding my participation in the ESPP or my acquisition or sale of shares of Common Stock. I understand that I should consult with my own personal tax, legal and financial advisors regarding my participation in the ESPP before taking any action related to the ESPP.

SECTION 8:

**ELECTRONIC DELIVERY AND ACCEPTANCE**

The Company may, in its sole discretion, decide to deliver any documents related to current or future participation in the ESPP by electronic means. I hereby consent to receive such documents by electronic delivery and agree to participate in the ESPP through an on-line or electronic system established and maintained by the Company or a third party designated by the Company.

SECTION 9:

**ACKNOWLEDGMENT AND SIGNATURE**

I acknowledge that I have received the ESPP Prospectus (which summarizes the major features of the ESPP) and that the ESPP is available online at sec.gov. I have read the ESPP Prospectus and my signature below indicates that I hereby agree to be bound by the terms of the ESPP.

Signature:_____ Date:_____

*FOR CHANGES TO ELECTIONS AFTER INITIAL OFFERING PERIOD AND TO ENROLL IN SUBSEQUENT OFFERING PERIODS*

**DAY ONE BIOPHARMACEUTICALS, INC. (THE "COMPANY")**
**2021 EMPLOYEE STOCK PURCHASE PLAN**

**ENROLLMENT / CHANGE FORM**

*Capitalized terms used but not otherwise defined herein shall have the meaning given to them in the ESPP.*

| | | |
|---|---|---|
| SECTION 1: | **CHECK DESIRED ACTION:** | **AND COMPLETE SECTIONS:** |
| **ACTIONS** | ☐ Enroll in the ESPP | 2 + 3 + 4 + 9 |
| | ☐ Elect / Change Contribution Percentage | 2 + 4 + 9 |
| | ☐ Discontinue/Withdraw from ESPP | 2 + 5 + 9 |

SECTION 2:

**PERSONAL DATA**

Name: _____

Home Address: _____

_____

Employee ID: _____

SECTION 3:

**ENROLL**

☐ I hereby elect to participate in the Company's 2021 Employee Stock Purchase Plan (the "***ESPP***"), effective at the beginning of the next Offering Period. I elect to purchase shares of Common Stock of the Company pursuant to the terms and conditions of the ESPP and this Enrollment/Change Form. I understand that the shares purchased on my behalf will be issued in street name and deposited directly into my brokerage account. I hereby agree to take all steps, and sign all forms, required to establish an account with the Company's broker for this purpose.

My participation will continue as long as I remain eligible, unless I withdraw from the ESPP by filing a new Enrollment/Change Form with the Company or any third party designated by the Company. I understand that I must notify the Company of any disposition of shares purchased under the ESPP.

SECTION 4:

**ELECT/CHANGE CONTRIBUTION PERCENTAGE**

I hereby authorize the Company to withhold from each of my paychecks such amount as is equal to ___% of my compensation paid during such Purchase Period, as long as I continue to participate in the ESPP. My contributions, plus any accumulated contributions thus far during the current Purchase Period if this is a change, will be applied to the purchase of shares of Common Stock pursuant to the ESPP. **The percentage must be a whole number (from 1% up to a maximum of 15% contribution).**

If this is a change to my current enrollment, this represents an ☐-increase ☐-decrease to my contribution percentage.

**Note:** You may not increase your contributions at any time within an ongoing Offering Period. An increase in your contribution percentage can only take effect with the next Offering Period. You may decrease your contribution percentage to a percentage other than 0% only once within an Offering Period to be effective during that Offering Period. A change will become effective as soon as reasonably practicable after the form is received by the Company.

SECTION 5:

**WITHDRAW FROM ESPP / DISCONTINUE CONTRIBUTIONS**

***DO NOT CHECK THE BOX BELOW IF YOU WISH TO CONTINUE PARTICIPATION IN THE ESPP***

☐ I hereby elect to withdraw from the ESPP and stop my contributions under the ESPP, effective as soon as reasonably practicable after this form is received by the Company. Accumulated contributions will be returned to me without interest.

**I understand that I cannot resume participation until the start of the next Offering Period and must timely file a new enrollment form to do so.**

**Note:** No future contributions will be made if you elect to discontinue contributions or withdraw from the ESPP. You may enroll in subsequent Offering Periods.

SECTION 6:

**COMPLIANCE WITH LAW**

Unless there is an available exemption from any registration, qualification or other legal requirement applicable to the shares of Common Stock the Company shall not be required to deliver any shares under the ESPP prior to the completion of any registration or qualification of the shares under any applicable law, or prior to obtaining any approval or other clearance from any local, state, federal or foreign governmental agency, which registration, qualification or approval the Company shall, in its absolute discretion, deem necessary or advisable. I agree that the Company shall have unilateral authority to amend the ESPP and this Agreement without my consent to the extent necessary to comply with securities or other laws applicable to the issuance of shares.

SECTION 7:

**NO ADVICE REGARDING GRANT**

The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding my participation in the ESPP or my acquisition or sale of shares of Common Stock. I understand that I should consult with my own personal tax, legal and financial advisors regarding my participation in the ESPP before taking any action related to the ESPP.

SECTION 8:

**ELECTRONIC DELIVERY AND ACCEPTANCE**

The Company may, in its sole discretion, decide to deliver any documents related to current or future participation in the ESPP by electronic means. I hereby consent to receive such documents by electronic delivery and agree to participate in the ESPP through an on-line or electronic system established and maintained by the Company or a third party designated by the Company.

SECTION 9:

**ACKNOWLEDGMENT AND SIGNATURE**

I acknowledge that I have received a copy of the ESPP and the ESPP Prospectus (which summarizes the major features of the ESPP). I have read the ESPP and the ESPP Prospectus and my signature below indicates that I hereby agree to be bound by the terms of the ESPP.

Signature:_____ Date:_____

**CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [*], HAS BEEN OMITTED BECAUSE IT IS NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE AND CONFIDENTIAL.**

# OYSTER POINT MARINA PLAZA

# OFFICE LEASE

**of**

**SUITE 217**

**to**

**DAY ONE THERAPEUTICS, INC.,**

**a Delaware corporation**

**395 OYSTER POINT BOULEVARD**
**SOUTH SAN FRANCISCO, CA 94080**

**OYSTER POINT MARINA PLAZA**

**OFFICE LEASE**

THIS OFFICE LEASE (the "Lease") is entered into as of February 8, 2020, by and between KASHIWA FUDOSAN AMERICA, INC., a California corporation ("Landlord") and DAY ONE THERAPEUTICS, INC., a Delaware corporation ("Tenant").

## 1 BASIC LEASE TERMS

**1.1 LEASE OF PREMISES**. Landlord leases to Tenant, and Tenant rents and hires from Landlord, the premises described in § 1.3 below, in the building known by the street address 395 Oyster Point Boulevard (the "Building") in the City of South San Francisco, County of San Mateo, State of California, on the property described in § 1.6 below, in the business park commonly known as Oyster Point Marina Plaza (the "Complex"), for the term stated in § 1.4 below, for the rents hereinafter reserved, and upon and subject to the terms, conditions (including limitations, restrictions, and reservations), and covenants hereinafter provided. The Building and the Complex are more particularly described and depicted in **Exhibit A** which is attached hereto. Each party hereby expressly covenants and agrees to observe and perform all of the conditions and covenants herein contained on its part to be observed and performed.

**1.2 SUMMARY TABLE**. The parties agree that the following table (the "Table") sets forth in summary form the basic terms of this Lease, including the specific space comprising the Premises and, with respect to such space, the Term of the Lease, the usable and rentable square footage, the Base Rent, Base Year, and Tenant's Share, as all of such terms are defined below:

| PERIOD | SUITE NO. | RSF | USF | MONTHLY BASE RENT | T's SHARE BLDG | T's SHARE COMPLEX | BASE YEAR |
|---|---|---|---|---|---|---|---|
| March 1, 2020 through February 28, 2021 | 217 | 4,759 | 3,965 | $16,656.50 | 2.035% | 1.018% | 2020 |
| March 1, 2021 through February 28, 2022 | 217 | 4,759 | 3,965 | $17,156.20 | 2.035% | 1.018% | 2020 |
| March 1, 2022 through February 28, 2023 | 217 | 4,759 | 3,965 | $17,670.88 | 2.035% | 1.018% | 2020 |

In the event of any conflict between the terms contained in the Table and the terms contained in subsequent sections of the Lease, the terms of the Table shall control, except that any dates stated in the Table are subject to adjustment as appropriate to the extent any other provisions of the Lease provide for adjustments to the Commencement Date and/ or the Expiration Date.

**1.3 PREMISES**. The premises leased to Tenant comprise approximately 4,759 rentable square feet of space on the second (2nd) floor of the Building and are commonly known as **Suite 217** (the "Premises"), as outlined on the floor plan annexed hereto as **Exhibit B** (the "Space Plan") together with details of improvements described on the Space Plan to be constructed in accordance with the provisions of § 3.2 below. The Premises also include all fixtures and equipment which are attached thereto, except items not deemed to be included therein and which are removable by Tenant as provided in Article 10 below. Landlord and Tenant agree that the usable and rentable area of the Premises, and the respective rentable areas of the Property (as defined in § 1.6 below) and Complex, for all purposes under this Lease, are as follows and as specified in the Table:

Property's Rentable Area: 233,914 rsf
Complex's Rentable Area: 467,360 rsf

Tenant acknowledges that it has caused its architect to verify the numbers stated in the Table and herein relating to the measurements of such spaces prior to the Commencement Date of this Lease or has had an opportunity to do so.

**1.4 TERM; COMMENCEMENT DATE**. The term (the "Term") for which the Premises are hereby leased shall extend for a period of three (3) years, shall commence on March 1, 2020 (the "Commencement Date"), and shall end at noon on February 28, 2023, (the "Expiration Date") or any earlier date upon which the Term may expire or be cancelled or terminated pursuant to any of the conditions or covenants of this Lease or pursuant to law. Promptly following the Commencement Date the parties hereto shall, if required by Landlord, enter into a supplementary agreement fixing the dates of the Commencement Date and the Expiration Date in the form which is attached hereto as **Exhibit E** and incorporated herein by reference.

**1.4.1 Option to Renew**. Tenant is hereby granted one (1) option to extend (the "Extension Option") the Term of the Lease for one (1) additional period of three (3) years (the "Extension Period"). The Extension Period term shall begin the first day following the Expiration Date and shall take effect on the same terms and conditions in effect under the Lease immediately prior to the Extension Period, except that (i) Tenant shall have no further right to extend and (ii) monthly Base Rent shall be the rate which is Fair Market Value (as defined below). The Fair Market Value shall be the effective rent (face rate less free rent) being charged for comparable space in comparable buildings in the vicinity of the Building leased on comparable terms and shall be limited to the rates charged in such comparable transactions for tenants renewing or extending their leases.

**(a) Exercise of Option**. The Extension Option may be exercised only by (i) delivering in person to Landlord's Building Manager in the Building Office written notice of Tenant's irrevocable election to exercise no earlier than nine (9) months and no later than six (6) months prior to the commencement of the Extension Period, and (ii) collecting and retaining in exchange for such notice of exercise an original written receipt therefor signed and dated by Landlord's Building Manager. Tenant's exercise of its Extension Option shall not be effective or valid if there is any deviation in the timing or manner of exercise prescribed herein.

**(b) Failure to Exercise**. If Tenant shall fail validly and timely to exercise the Option herein granted, said Option shall terminate and shall be null and void and of no further force and effect.

**(c) Fair Market Value**. Provided that Tenant has validly exercised its Option when and as required hereunder, not less than one hundred and eighty (180) days prior to the commencement of the Extension Period, Landlord shall provide written notice to Tenant of its determination of the Fair Market Value. Within ten (10) days after receiving such determination ("Tenant's Review Period"), Tenant shall irrevocably elect, in writing, to do one of the following: (i) accept Landlord's determination; or (ii) object to Landlord's determination and with such objection set forth in writing Tenant's determination of the Fair Market Value. If Tenant so objects, Landlord and Tenant shall attempt in good faith to agree upon such Fair Market Value using their best good-faith efforts. If Landlord and Tenant fail to reach agreement within fifteen (15) days following Tenant's Review Period (the "Outside Agreement Date"), then each party's determination shall be submitted to arbitration in accordance with the then-current rules and procedures of the American Arbitration Association, but subject to the instructions set forth in this§ 1.4.1 et seq.. If Tenant objects to Landlord's determination of Fair Market Value, Tenant shall pay Rent at the Fair Market Value determined by Landlord until the matter is resolved by binding arbitration as provided below subject to retroactive adjustment after the matter is so resolved. If Tenant fails so to accept or object to Landlord's determination of Fair Market Value in writing within Tenant's Review Period, Tenant shall conclusively be deemed to have approved of the Fair Market Value as determined by Landlord. The determination of the arbitrators shall be limited solely to the issue of whether Landlord's or Tenant's submitted Fair Market Value for the Premises is the more accurate as determined by the arbitrators, taking into account the requirements of this§ 1.4.1 et seq.

**(d) Appointment of Arbitrators**. Not later than fifteen (15) days following the Outside Agreement Date, Landlord and Tenant shall each appoint one arbitrator who shall by profession be a real estate broker who shall have been active over the ten-year period ending on the date of such appointment in the leasing of commercial properties within northern San Mateo County. The determination of the arbitrators shall be limited solely to the issue of whether Landlord's or Tenant's submitted Fair Market Value for the Premises is the more accurate as determined by the arbitrators, taking into account the requirements of this§ 1.4.1 et seq.

**(e) Appointment of Third Arbitrator**. The two (2) arbitrators so appointed shall within fifteen (15) days of the date of the appointment of the last-appointed arbitrator agree upon and appoint a third arbitrator, who shall be qualified under the same criteria as set forth hereinabove for qualification of the initial two arbitrators.

**(f) Arbitrators' Decision**. The three (3) arbitrators shall, within thirty (30) days of the appointment of the third arbitrator, reach a decision as to whether the parties shall use Landlord's or Tenant's submitted Fair Market Value, and shall notify Landlord and Tenant thereof. The decision of the majority of the three (3) arbitrators shall be binding upon Landlord and Tenant. The arbitrators shall not be permitted to set Fair Market Value to any level other than either Landlord's or Tenant's submitted Fair Market Value.

**(g) Failure to Appoint**. If either Landlord or Tenant fails to appoint an arbitrator within fifteen (15) days after the Outside Agreement Date, the arbitrator timely appointed by one of the parties shall reach a decision, notify Landlord and Tenant thereof, and such arbitrator's decision shall be binding upon Landlord and Tenant. If the two (2) arbitrators fail to agree upon and appoint a third arbitrator, both arbitrators shall be dismissed and the matter to be decided shall be forthwith submitted to arbitration under the Commercial Arbitration Rules of the American Arbitration Association then in effect, but subject to the instructions set forth in this§ 1.4.1 et seq..

**(h) Cost of Arbitration**. The cost of arbitration shall be paid by Landlord and Tenant equally.

**(i) Default**. Tenant's exercise of the Option shall, at Landlord's election, be null and void if Tenant is in Default on the date of Tenant's notice of exercise or at any time thereafter and prior to commencement of the Extension Period. Tenant's exercise of the Extension Option shall not operate to cure any Default by Tenant nor to extinguish or impair any rights or remedies of Landlord arising by virtue of such Default. If the Lease or Tenant's right to possession of the Premises shall terminate before Tenant shall have exercised the Extension Option, then immediately upon such termination the Extension Option shall simultaneously terminate and become null and void.

**(j) Time**. Time is of the essence of the Extension Option granted hereunder.

**1.5 RENT**. The "Rent" reserved under this Lease, for the Term thereof, shall consist of the following:

**(a)** "Base Rent" as set forth in the Table for the various spaces and periods described therein per month, which shall be payable in advance on the first day of each and every calendar month during the Term of this Lease, except that Tenant shall pay the first month's Base Rent due under the Lease upon the execution and delivery of this Lease by Tenant; and

**(b)** "Additional Rent" consisting of any and all other sums of money as shall become payable by Tenant to Landlord hereunder; and Landlord shall have the same remedies for default in the payment of Additional Rent as for a default in payment of Base Rent).

**1.5.1 Payment of Rent**. Tenant shall pay the Base Rent and Additional Rent promptly when due, without demand therefor and without any abatement, deduction, or setoff whatsoever, except as may be expressly provided in this Lease. Tenant shall pay the Rent to Landlord, in lawful money of the United States of America, at Landlord's office at the Complex or at such other place, or to such agent and at such place, as Landlord may designate by notice to Tenant. If the Commencement Date occurs on a day other than the first day of a calendar month, the Base Rent for such calendar month shall be prorated based on a 30-day month, and the balance of the first month's Base Rent theretofore paid shall be credited against the next monthly installment of Base Rent. Notwithstanding anything to the contrary in this Lease, Tenant shall pay the first month's Base Rent due hereunder, together with the Security Deposit due under§ 5.1 below, upon Tenant's execution and delivery of this Lease to Landlord.

**1.5.2 Interest and Late Charges**. If Tenant fails to pay any Rent when due, the unpaid amounts shall bear interest from the due date until paid at a rate per annum equal to the Prime Rate plus five percent (5%) or, if less, at the highest rate of interest permitted by applicable law. As used herein, "Prime Rate" means the prime rate published in the Money Rates section of the Wall Street Journal (Western edition) as the same may change from time to time or in a similar publication if the Wall Street Journal ceases publication or ceases publication of its Money Rates section during the Term. Tenant acknowledges that the late payment of any monthly Rent will cause Landlord to lose the use of that money and incur costs and expenses not contemplated under this Lease, including administrative and collection costs and processing and account expenses, the exact amount of which it is difficult to ascertain. Therefore, in addition to interest, if any such installment is not received by Landlord within five (5) days from the date it is due, Tenant shall pay Landlord a late charge equal to ten percent (10%) of such installment. Landlord and Tenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for the loss suffered from such nonpayment by Tenant. In addition, any check returned by the bank for any reason will be considered late and will be subject to all late charges plus an additional returned check fee of Twenty Dollars ($20.00). After two such occasions upon which checks have been returned in any twelve-month period, Landlord will have the right to require payment by a cashier's check or money order. Acceptance of any interest or late charge shall not constitute a waiver of Tenant's default with respect to such nonpayment by Tenant nor prevent Landlord from exercising any other rights or remedies available to Landlord under this Lease or at law or in equity, unless the payment of such interest and late charges is accompanied by all rentals then due and owning (notwithstanding anything to the contrary in§ 20.2.1 below).

**1.6 PROPERTY**. For the purposes of this Lease, the "Property" shall mean the Building and any common or public areas or facilities, easements, corridors, lobbies, sidewalks, loading areas, driveways, landscaped areas, skywalk, parking garages and lots, and any and all other structures or facilities operated or maintained in connection with or for the benefit of the Building, and all parcels or tracts of land on which all or any portion of the Building or any of the other foregoing items are located, and any fixtures, machinery, equipment, apparatus, Systems and Equipment (as defined in § 1.6.5 below), furniture and other personal property located thereon or therein and used in connection therewith, whether title is held by Landlord or its affiliates. The Property shall also be deemed to include such other of the Complex's buildings or structures (and related facilities and parcels on which the same are located) as Landlord shall have incorporated by reference to the total square footage of the Building stated in § 1.3 above.

**1.6.1 Common Areas**. Tenant and its agents, employees, and invitees shall have the non-exclusive right with others designated by Landlord to the free use of the common areas in the Property and the Complex for the common areas' intended and normal purpose. The term common areas shall mean elevators, sidewalks, parking areas, driveways, hallways, stairways, public restrooms, common entrances, lobbies, and other similar public areas and access ways.

**1.6.2 Athletic Facility**. Notwithstanding the foregoing, the common areas do not include the Building's athletic facility (the "Athletic Facility"), which is an unsupervised and unattended weight and exercise room and shower facility. Tenant acknowledges that Landlord presently makes available (but is not obligated under this Lease to make available) the Athletic Facility for the general use of all tenants and their officers and employees, subject to such rules and regulations as Landlord may impose from time to time in its sole and absolute discretion regarding the use thereof. Tenant shall cause each of its officers and employees using the Athletic Facility to sign and deliver to Landlord an "Athletic Facility Use Agreement" in the form attached hereto as **Exhibit D**, as such form may be revised by Landlord from time to time in its sole and absolute discretion. Tenant understands and agrees that no individual shall be permitted use of or access to the Athletic Facility unless and until such individual shall have first signed and delivered the Athletic Facility Use Agreement to Landlord. Landlord shall have the right to limit the use of the Athletic Facility in any manner it may deem necessary, or to discontinue the Athletic Facility altogether, at any time, in its sole and absolute discretion, and neither Tenant nor its officers or employees shall be entitled to any compensation, credit, allowance, or offset of expenses or Rent as a result of any such limitation or discontinuance.

**1.6.3 Reservation to Landlord**. Notwithstanding anything to the contrary herein, possession of areas necessary for utilities, services, safety, and operation of the Property, including the Systems and Equipment, telephone closets (whether located in the common areas or in the Premises), fire exits and stairways, perimeter walls, space between the finished ceiling of the Premises and the slab of the floor or roof of the Property thereabove, and the use thereof, together with the right to install, maintain, operate, repair, and replace any part of the Systems and Equipment in, through, under, or above the Premises in locations that will not materially interfere with Tenant's use of the Premises, are hereby excepted from both the Premises and the common areas and are reserved by Landlord and not demised to Tenant. Tenant's access to the telephone closets on each floor and the Building's main telephone room shall be subject to the Rules (as defined in§ 13.1 below) and shall be permitted only with Landlord's written consent and under the supervision of Landlord's Building Engineer on each occasion that such access is sought.

**1.6.4 Changes and Alterations of the Property**. Landlord reserves the right to make repairs, alterations, additions, or improvements, structural or otherwise, in or to the Property or Complex as deemed necessary or desirable in Landlord's sole and absolute discretion, so long as such repairs or alterations do not materially and unreasonably interfere with Tenant's access to or beneficial use of the Premises for their intended purposes. Landlord reserves the right hereunder to do the following: (i) install, use, maintain, repair, and replace pipes, ducts, conduits, wires, and appurtenant meters and equipment for service to the various parts of the Property above the ceiling surfaces, below the floor surfaces, within the walls, and in the central core areas; (ii) to relocate any pipes, ducts, conduits, wires, and appurtenant meters and equipment which are located in the Premises or located elsewhere outside the Premises; (iii) expand the Building or the Complex; (iv) make changes to the Property or the Complex, including changes, expansions, and reductions in the location, size, shape, and number of driveways, entrances, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways, parking spaces, and parking areas; (v) close any of the common areas, so long as reasonable access to the Premises remains available; (vi) use the common areas while engaged in making additional improvements, repairs, or alterations to the Property, Complex, or any portion thereof; and (vii) do and perform such other acts and make such other changes in, to, or with respect to the Property, Complex, common areas, and Building as Landlord may deem appropriate . The exercise of any of the foregoing rights shall not subject Landlord to claims for constructive eviction, abatement of Rent, damages, or other claims of any kind, except as otherwise expressly provided in this Lease. If Landlord enters the Premises to exercise any of the foregoing rights, Landlord shall provide reasonable advance written or oral notice to Tenant's on-site manager.

**1.6.5 Systems and Equipment**. As used in this Lease, "Systems and Equipment" means collectively any existing plant, machinery, transformers, duct work, intrabuilding network cables and wires that transmit voice, data, and other telecommunications signals ("INC"), and other equipment, facilities, and systems designed to supply water, heat, ventilation, air conditioning and humidity or any other services or utilities, or comprising or serving as any component or portion of the electrical, gas, steam, plumbing, sprinkler, communications, alarm, security, or fire/life/ safety systems or equipment, or any other mechanical, electrical, electronic, computer or other systems or equipment for the Property.

## 2 USE

**2.1 USE AND ENJOYMENT OF PREMISES**. Tenant shall use and occupy the Premises for executive and general offices and for no other purpose. Notwithstanding anything contained herein to the contrary, Tenant may use portions of the Premises not to exceed one hundred fifty (150) usable square feet for the preparation and reheating of food and beverages, including the use of refrigerators, ice makers, coffee machines, hot plates, microwave ovens, or similar heating devices (but not for the actual cooking of food) for service only to Tenant's employees and business invitees.

**2.1.1 Suitability**. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Premises, the Property, or the Complex, or with respect to the suitability of same for the conduct of Tenant's business, except as expressly provided in this Lease. Tenant's acceptance of possession of the Premises shall conclusively establish that the foregoing were at such time in satisfactory condition. Landlord makes no representation to Tenant regarding the installation, ownership, location, or suitability for Tenant's purposes of the INC in the Building.

**2.1.2 Insurance Rates**. Tenant shall not do or suffer anything to be done in or about the Premises, nor shall Tenant bring or allow anything to be brought into the Premises, which will in any way increase the rate of any fire insurance or other insurance upon the Property or its contents, cause a cancellation of said insurance, or otherwise affect said insurance in any manner.

**2.1.3 Use to Comply with Laws**. Tenant shall use the Premises in conformity with all applicable Laws, as specified in Article 6 below.

**2.1.4 Floor Loading**. Tenant shall not place or permit to be placed on any floor a load exceeding eighty (80) pounds per square foot or such lower floor load as such floor was designed to carry.

**2.2 NUISANCE AND WASTE**. Tenant also shall not do or suffer anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Property or injure or annoy said tenants or occupants, nor shall Tenant use or suffer the Premises to be used for any unlawful purposes. In no event shall Tenant cause or permit any nuisance in or about the Premises, and no loudspeakers or similar devices shall be used without the prior written approval of Landlord, which approval may be withheld in Landlord's sole and absolute discretion. Tenant shall not commit or suffer to be committed any waste in or upon the Premises. The provisions of this section are for the benefit of Landlord only and shall not be construed to be for the benefit of any tenant or occupant of the Building. If any governmental license or permit, other than a Certificate of Occupancy, shall be required for the proper and lawful conduct of Tenant's business in the Premises, or any part thereof, and if failure to secure such license or permit would in any way affect Landlord, Tenant, at its sole expense, shall procure and thereafter maintain such license or permit and submit the same for inspection by Landlord. Tenant shall at all times comply with the terms and conditions of each such license or permit.

**2.3 COMPLIANCE WITH CERTIFICATE OF OCCUPANCY** Tenant shall not at any time use or occupy the Premises, or suffer or permit anyone to use or occupy, the Premises, or do or permit anything to be done in the Premises, in violation of the Certificate of Occupancy for the Premises or for the Building.

## 3 PREPARATION OF THE PREMISES

**3.1 CONDITION OF PREMISES**. Except as otherwise expressly provided in § 3.2 below, Tenant shall accept the Premises, any existing Improvements in the Premises (as defined in§ 10.1 below), and the Systems and Equipment serving the same in an "as is" condition on the date the Term commences, and Landlord shall have no obligation to improve, alter, remodel, or otherwise modify the Premises prior to Tenant's occupancy or thereafter under this Lease.

**3.2 LANDLORD'S PREPARATION**. Landlord shall use reasonable diligence in completing and preparing the Premises for Tenant's occupancy in the manner and subject to the terms, conditions, and covenants set forth in this Article 3 on or before the Commencement Date specified in § 1.4 above.

**3.2.1 Effect of Delay**. If the Occupancy Conditions specified in § 3.2.2 below are not met by the Commencement Date specified in § 1.4 above, the Commencement Date shall be delayed by one day for each day that the date on which the Occupancy Conditions are met extends beyond the Commencement Date specified in § 1.4 above; and in any such case, Tenant shall not have the right to terminate the Lease, but Tenant's obligation to pay Rent shall be delayed until the occurrence of the Commencement Date.

**3.2.2 Landlord's Work**. The facilities, materials, and work to be furnished, installed, and performed in the Premises by Landlord hereunder at Landlord's sole cost and expense are referred to as the "Work." Any other installations, materials, and work which may be undertaken by or for the account of Tenant to prepare, equip, decorate, and furnish the Premises for Tenant's occupancy are referred to as the "Tenant's Work," which shall be undertaken or installed by Tenant at Tenant's sole cost and expense and which shall include the installation of Tenant's furniture, fixtures, office systems, and Tenant's data and telecommunications cables and wiring. The parties agree that Landlord's Work, to be completed by Landlord at Landlord's sole cost and expense in preparation for Tenant's Work, shall consist of the following items only:

**(a)** repair or replacement of any stained or damaged ceiling tiles throughout the Premises; and

**(b)** delivery of the Premises with all Systems and Equipment serving the same in good working order.

**3.2.3 Tenant's Work**. Tenant shall have the right to improve the Premises as delineated in§§ 3.2.3 through 3.2.11 below setting forth the scope of Tenant's Work and payment for the cost thereof.

**3.2.4 Completion of Plans**. On or before February 29, 2020 (the "Date To Complete Planning"), Tenant shall (a) provide Landlord's Space Planner with all information concerning Tenant's requirements in order for Space Planner to prepare the final plans for the Work (the "Plans"), (b) arrange for Space Planner to prepare the Plans, and (c) obtain Landlord's written approval of the Plans.

**3.2.5 Cost of the Work and Tenant Improvement Allowance**. Landlord shall bear the cost of the Work (including the cost of architectural and engineering, combining the energy-management and life-safety systems, demolition, building permits, Landlord's construction supervision fee as required for Tenant's Changes under the Lease, and sales tax) as shown on the final approved Plans up to the maximum amount of Ten Thousand Dollars ($10,000.00) (the "Improvement Allowance"); and Tenant shall bear any

costs which exceed such Improvement Allowance or incurred in connection with any work it may desire in addition to the Work shown on the final approved Plans (referred to collectively as "Tenant's Costs" and defined in§ 3.2.6 below). Landlord shall have the right to charge against the Improvement Allowance specified above a construction management fee of five percent (5%) of the aggregate cost of (a) the Landlord's Work and (b) Tenant's Work (if any).

**3.2.6 Cost of the Plans**. The cost of the Plans (including any engineering reports or other studies or tests in connection therewith) may be paid with the Improvement Allowance, subject to its aggregate maximum specified in § 3.2.5 above, and Tenant shall bear any costs of the Plans which exceed the Improvement Allowance.

**3.2.7 Landlord's Approval of Plans**. Landlord shall either approve any Plans or revisions submitted hereunder or disapprove the same with suggestions for making the same acceptable within the shortest time reasonably practicable. Landlord shall not unreasonably withhold approval, if the Plans provide for a customary office layout, with finishes and materials generally conforming to Building-standard materials currently being used by Landlord at the Building, are compatible with the Building's shell and core construction, and if no modifications will be required for the base Building electrical, heating, air-conditioning, ventilation, plumbing, fire protection, life safety, or other systems or equipment, and will not require any structural modifications to the Building, whether required by heavy loads or otherwise. Landlord may request that Tenant approve Landlord's suggested changes in writing (such approval shall not be unreasonably withheld), or Landlord may arrange directly with Space Planner for revised Plans to be prepared incorporating such suggestions; and in any such case, Tenant shall sign or initial the revised Plans and/ or Landlord's notice concerning the suggested changes, if requested by Landlord. Landlord's approval of the Plans shall not be deemed a warranty as to the adequacy or legality of the design, and Landlord hereby disclaims any responsibility or liability for the same. Tenant & Landlord agree that Tenant's Work may include any or all of the following items:

**(a)** design, architectural, construction, engineering, life safety, MEPs, permitting, and related construction;

**(b)** installation of an approved dishwasher;

**(c)** application of fresh paint to two (2) accents walls; and

**(d)** installation of Mecho shades.

**3.2.8 Delays in Planning**. The Commencement Date under the Lease shall be postponed for each day that final Plans are not prepared and approved by the Date to Complete Planning described above, including any revisions reasonably required by Landlord pursuant to § 3.2.7 above and revisions by Tenant to reduce Tenant's Cost pursuant to § 3.2.5 above (collectively called "Delays in Planning"). Notwithstanding anything to the contrary herein, the commencement of Rent shall be postponed only to the extent that substantial completion of the Work is delayed beyond the Commencement Date as a result of one or more of the following events (collectively called "Landlord Delays"):

**(A) Delay in Approval of Plans**. Landlord takes more than seven (7) business days to approve or disapprove the Plans or revisions thereof after receiving the same (or such longer time as may be reasonably required in order to obtain any engineering or HVAC report or due to other special or unusual features of the Work or Plans);

**(B) Delay of Space Planner**. Landlord's Space Planner takes more than five (5) business days to meet with Tenant after receiving a written request for a meeting or takes more than five (5) business days to prepare or revise the Plans after meeting with Tenant and receiving all information from Tenant required in order to do so; or

**(C) Delay of Cost Estimates**. Landlord takes more than thirty (30) days to provide Tenant with cost estimates after receiving Plans sufficiently detailed for such purposes.

**3.2.9 Changes After Plans Are Approved**. If Tenant shall desire any changes, alternations, or additions to the final Plans after they have been approved by Landlord, Tenant shall submit a detailed written request or revised Plans (the "Change Order") to the Landlord for approval. If reasonable and practicable and generally consistent with the Plans theretofore approved, Landlord shall not unreasonably withhold approval; but all costs in connection therewith, including construction costs, permit fees, and any additional plans, drawings, engineering reports, or other studies or tests, or revisions of such existing items, shall be paid for by Tenant as a Tenant's Cost under § 3.2.10 below.

**3.2.10 Tenant's Cost; Estimates (If Applicable)**. Any amounts that Tenant is required to pay hereunder shall be referred to as "Tenant's Cost" herein. Tenant's Cost shall be deemed additional "Rent" under the Lease. Landlord may at any time reasonably estimate Tenant's Cost in advance, in which case, Tenant shall deposit such estimated amount with Landlord within ten (10) days after requested by Landlord. If such estimated amount exceeds the actual amount of Tenant's Cost, Tenant shall receive a prompt refund of the difference; and if the actual amount shall exceed the estimated amount, Tenant shall pay the difference to Landlord within ten (10) days after requested by Landlord.

**3.2.11 Construction Management Services**. Notwithstanding anything to the contrary in this Lease, at the completion of Landlord's Work, Tenant shall pay to Landlord promptly upon receipt of invoice a construction management fee in the amount of five percent (5%) of the total cost of Landlord's Work (the "CM Fee") to cover the cost of Landlord's personnel providing construction management services in connection with Landlord's Work in the Premises.

**3.2.12 Readiness for Occupancy**. The Premises shall be deemed ready for occupancy on the earliest date on which all of the following conditions (the "Occupancy Conditions") have first been met:

**(a) Substantial Completion of Work**. The Work has been substantially completed as determined by Landlord its reasonable discretion and, if applicable, Landlord's architect has issued a certificate of substantial completion; and it shall be so deemed notwithstanding the fact that minor or insubstantial details of construction, mechanical adjustment, or decoration remain to be performed, the noncompletion of which does not materially interfere with Tenant's beneficial use of the Premises for their intended purposes;

**(b) Access and Services**. Reasonable means of access and facilities necessary to Tenant's use and occupancy of the Premises, including corridors, elevators, stairways, heating, ventilating, air-conditioning, sanitary, water, and electrical facilities (but exclusive of parking facilities) have been installed and are in reasonably good operating order and available to Tenant; and

**(c) Required Governmental Approval**. If a building permit for the Work is required, a final inspection card or similar governmental approval (temporary or final) has been issued by the City of South San Francisco permitting use of the Premises for office purposes.

**3.2.13 Tenant Delays**. If the occurrence of any of the Occupancy Conditions and Landlord's preparation of the Premises for occupancy shall be delayed owing to either (a) any act, omission, or failure of Tenant or any of its employees, agents, or contractors which shall continue after Landlord shall have given Tenant reasonable notice that such act, omission, or failure would result in delay, and such delay shall have been unavoidable by Landlord in the exercise of reasonable diligence and prudence; or (b) the nature of any items of additional work or change orders that Landlord undertakes to perform for the account of Tenant (including any delays incurred by Landlord, after making reasonable efforts, in procuring any materials, equipment, or fixtures of a kind or nature not used by Landlord as part of its standard construction) (collectively "Tenant Delays"), then the Premises shall be deemed ready for occupancy on the date when they would have been ready but for such Tenant Delays.

**3.3 EARLY ENTRY**. During any period that Tenant shall be permitted to enter the Premises prior to the Commencement Date other than to occupy the same (e.g., to perform alterations or improvements), Tenant shall comply with all terms and provisions of this Lease, except those provisions requiring the payment of Rent. If Tenant shall be permitted to enter the Premises prior to the Commencement Date for the purpose of occupying the same, Rent shall commence on such date at the rate specified in the Table for the first period during which Rent is payable after the Commencement Date; and if Tenant shall commence occupying only a portion of the Premises prior to the Commencement Date, Rent shall be prorated based on the number of rentable square feet occupied by Tenant. Landlord shall permit early entry, provided the Premises are legally available and Landlord has completed any Work required under this Lease. In no event shall Tenant's early entry extend or shorten the Term of the Lease set forth in§ 1.2 above. Notwithstanding anything to the contrary herein, Tenant shall have the right enter the Premises free from the obligation to pay Rent for the period commencing two (2) weeks prior to the Commencement Date for the limited purposes of installing Tenant's furniture and fixtures and telephone and data equipment, lines, and cabling, provided that Tenant's does not interfere with Landlord's completion of the Work and that Tenant has delivered to Landlord the insurance certificates and the Security Deposit required hereunder.

**3.4 NOTICE OF DEFECTS**. It shall be conclusively presumed upon Tenant's taking actual possession of the Premises that the same were in satisfactory condition (except for latent defects) as of the date of such taking of possession, unless within thirty (30) days after the Commencement Date Tenant shall give Landlord notice in writing specifying the respects in which the Premises were not in satisfactory condition.

## 4 ADJUSTMENTS OF RENT

**4.1 TAXES AND OPERATING EXPENSES**. In addition to the Base Rent and all other payments due under this Lease, Tenant shall pay to Landlord, in the manner set forth in this Article 4, as Additional Rent, the following amounts:

**(a) Increased Operating Expenses**. An amount equal to Tenant's Pro Rata Share of that portion of Operating Expenses paid by Landlord during each Adjustment Period which exceeds the amount of Base Operating Expenses (as all of such terms are defined in § 4.2 below); and

**(b) Increased Taxes**. An amount equal to Tenant's Pro Rata Share of that portion of Real Estate Taxes paid by Landlord during each Adjustment Period which exceeds the amount of Base Real Estate Taxes (as all of such terms are defined in § 4.2 below).

Tenant's Pro Rata Share of (i) such increase in Operating Expenses over the Base Operating Expenses and (ii) such increase in Real Estate Taxes over the Base Real Estate Taxes is sometimes referred to collectively herein as the "Rental Adjustment."

**4.2 DEFINITIONS**. For the purposes of this Lease, the following definitions shall apply:

**(a) Base Operating Expenses**. "Base Operating Expenses" means the total of Operating Expenses paid by Landlord during **calendar year 2020** (the "Base Expense Year"), as adjusted under § 4.5 below.

**(b) Base Real Estate Taxes**. "Base Real Estate Taxes" means the total of Real Estate Taxes paid by Landlord during calendar year 2020 (the "Base Tax Year").

**(c) Tenant's Pro Rata Share**. "Tenant's Pro Rata Share" as to the Building is the percentage labeled as such in the Table in § 1.2 and is calculated by dividing the agreed rentable area of the Premises (numerator) by the agreed rentable area of the Property (denominator) and expressing the resulting quotient as a percentage. "Tenant's Pro Rata Share" as to the Complex is the percentage labeled as such in the Table in§ 1.2 as is calculated by dividing the agreed rentable area of the Premises (numerator) by the agreed rentable area of the Complex (denominator) and expressing the resulting quotient as a percentage. Tenant's Pro Rata Share shall be increased during the Term in proportion to any increase in the area of the Premises in accordance with the formula stated herein.

**(d) Adjustment Period**. "Adjustment Period" as to Operating Expenses and Real Estate Taxes means each calendar year of which any portion occurs during the Term, excluding the Base Year and beginning with the first calendar year immediately following the Base Year.

**(e) Real Estate Taxes**. "Real Estate Taxes" means all of the following charges, whether or not now customary or in the contemplation of the parties hereto, and whether or not general, special, ordinary, or extraordinary, which Landlord shall pay during any Adjustment Period because of or in connection with the ownership, leasing, or operation of the Property:

**(1)** *ad valorem* real property taxes;

**(2)** any form of assessment, license fee, license tax, business license fee, commercial rental tax, levy, charge, fee, tax, or other imposition imposed by any authority, including any city, county, state, or federal governmental agency, or any school, agricultural, lighting, transportation, housing, drainage, or other improvement or special assessment district thereof;

**(3)** any tax on Landlord's 'right' to rent or 'right' to other income from the Building or as against Landlord's business of leasing the Building;

**(4)** any assessment, tax, fee, levy, or charge in substitution, partially or totally, of any assessment tax, fee, levy or charge previously included within the definition of Real Estate Taxes, it being acknowledged by Tenant and Landlord that Proposition 13 was adopted by the voters of the State of California in the Election of June, 1978, and that assessments, taxes, fees, levies, and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk, and road maintenance, refuse removal, and for other governmental services formerly provided without charge to property owners or occupants, and it being the intention of Tenant and Landlord that all such new and increased assessments, taxes, fees, levies, and charges be included within the definition of Real Estate Taxes for the purposes of this Lease;

**(5)** any assessment, tax, fee, levy, or charge allocable to or measured by the area of the Building or Property or the Rent payable hereunder, including any gross income tax or excise tax levied by any city, county, state, or federal governmental agency or any political subdivision thereof with respect to the receipt of such Rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use, or occupancy by Tenant of the Property or any portion thereof;

**(6)** any assessment, tax, fee, levy, or charge upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Building or Property;

**(7)** any assessment, tax, fee, levy, or charge by any governmental agency related to any transportation plan, fund, or system instituted within the geographic area of which the Building is a part; or

**(8)** reasonable legal and other professional fees, costs and disbursements incurred in connection with proceedings to contest, determine or reduce Real Estate Taxes.

**Exclusions**. Notwithstanding the foregoing, Real Estate Taxes shall not include (A) federal, state, or local income taxes; (B) franchise, gift, transfer, excise, capital stock, estate, succession, or inheritance taxes; or (C) penalties or interest for late payment of Real Estate Taxes.

**(f) Operating Expenses**. "Operating Expenses" means all expenses, costs, and amounts (other than Real Estate Taxes) of every kind and nature which Landlord shall pay during any Adjustment Period of which any portion occurs during the Term, because of or in connection with the ownership, management, repair, maintenance, restoration, and/or operation of the Property, including costs of the following:

**(1)** all expenses, costs, and amounts of every kind and nature which Landlord shall pay during any Adjustment Period of which any portion occurs during the Term, because of or in connection with the electricity, power, gas, steam, oil or other fuel, water, sewer, lighting, heating, air conditioning, and ventilating delivered to or consumed or used in or on the Property, but excluding the cost of any utilities provided by a public utility directly to any tenant in the Complex and/ or billed directly and separately by such utility or Landlord to such tenant by means of separate metering or otherwise;

**(2)** permits, licenses, and certificates necessary to operate, manage, and lease the Property;

**(3)** supplies, tools, equipment, and materials used in the operation, repair, and maintenance of the Property;

**(4)** all insurance premiums for any insurance policies deemed necessary or desirable by Landlord (including workers' compensation, health, accident, group life, public liability, property damage, earthquake, and fire and extended coverage insurance for the full replacement cost of the Property as required by Landlord or its lenders for the Property);

**(5)** the deductible portion of any claim paid under any insurance policy maintained by Landlord in connection with its management and operation of the Property;

**(6)** accounting, legal, inspection, consulting, concierge, and other services;

**(7)** services of independent contractors;

**(8)** compensation (including employment taxes and fringe benefits) of all persons who perform duties in connection with the operation, maintenance, repair, or overhaul of the Building or Property, and equipment, improvements, and facilities located within the Property, including engineers, janitors, painters, floor waxers, window washers, security, parking personnel, and gardeners;

**(9)** operation and maintenance of a room for delivery and distribution of mail to tenants of the Building as required by the U.S. Postal Service (including an amount equal to the fair market rental value of the mail room premises);

**(10)** management of the Building or Property, whether managed by Landlord or an independent contractor (including an amount equal to the fair market value of any on-site manager's office);

**(11)** rental expenses for (or a reasonable depreciation allowance on) personal property used in maintenance, operation, or repair of the Property and installment equipment purchase or equipment financing agreements for such personal property;

**(12)** costs, expenditures, or charges (whether capitalized or not) required by any governmental or quasi-governmental authority after the Commencement Date;

**(13)** payments under any easement, operating agreement, declaration, restrictive covenant, or instrument pertaining to the sharing of costs in any planned development;

**(14)** amortization of capital expenses (including financing costs) incurred by Landlord after the Commencement Date in order to (A) comply with Laws enacted after the Commencement Date, (B) reduce Property Operating Expenses, or (C) upgrade the utility, efficiency, or capacity of any Utility or telecommunication systems serving tenants of the Property;

**(15)** operation, repair, and maintenance of all Systems and Equipment and components thereof (including replacement of components); janitorial service; alarm and security service; window cleaning; trash removal; elevator maintenance; cleaning of walks, parking facilities, and building walls; removal of ice and snow; replacement of wall and floor coverings, ceiling tiles, and fixtures in lobbies, corridors, restrooms and other common or public areas or facilities; maintenance and repair of the roof and exterior fabric of the Building, including replacement of glazing as needed; maintenance and replacement of shrubs, trees, grass, sod, and other landscaped items, irrigation systems, drainage facilities, fences, curbs, and walkways; repaving and restriping parking facilities; and roof repairs;

**(16)** the operation of any on-site maintenance shop(s) and the operation and maintenance of the Athletic Facility, any other fitness center, conference rooms, and all other common areas and amenities in the Property;

**(17)** provision of shuttle busses, shuttle services, and drivers between the Complex and BART and SFO airport, as required by the Bay Area Regional Transportation Act and deed covenants and restrictions applicable to the Complex; and

**(18)** any other costs or expenses incurred by Landlord which are reasonably necessary to operate, repair, manage, and maintain the Building and Property in a first-class manner and condition and which are not otherwise reimbursed by tenants of the Building.

**Exclusions**. Notwithstanding the foregoing, Operating Expenses shall not include (A) depreciation, interest, and amortization on Superior Mortgages (as defined in§ 18.1 below), and other debt costs or ground lease payments, if any; (B) legal fees in connection with leasing, tenant disputes, or enforcement of leases; (C) real estate brokers' leasing commissions or other marketing costs; (D) improvements or alterations to tenant spaces; (E) the cost of providing any service directly to, and reimbursed or paid directly by, any tenant; (F) any costs expressly excluded from Operating Expenses elsewhere in this Lease; (G) costs of any items to the extent Landlord receives reimbursement from insurance proceeds, warranties, or from a third

party (such proceeds to be deducted from Operating Expenses in the year in which received); (H) capital expenditures, except those expressly permitted above; provided, all such permitted capital expenditures (together with reasonable financing charges) shall be amortized for purposes of this Lease over the shorter of (x) their useful lives or (y) the period during which the reasonably estimated savings in Operating Expenses equals the expenditures, or (z) three (3) years.

**4.3 MANNER OF PAYMENT**. To provide for current payments of the Rental Adjustment, Tenant shall pay as Additional Rent during each Adjustment Period an amount equal to Landlord's estimate of the Rental Adjustment which will be payable by Tenant for such Adjustment Period. Such payments shall be made in monthly installments, commencing on the first day of the month following the month in which Landlord notifies Tenant of the amount it is to pay hereunder and continuing until the first day of the month following the month in which Landlord gives Tenant a new notice of the estimated Rental Adjustment. It is the intention hereunder to estimate from time to time the amount of Tenant's Rental Adjustment for each Adjustment Period and then to effect a reconciliation in the following year based on the actual expenses incurred for the preceding Adjustment Period, as provided in 4.4 below.

**4.4 RECONCILIATION**. On or before the first day of April of each year after the first Adjustment Period (or as soon thereafter as is practical), Landlord shall deliver to Tenant a statement (the "Statement") setting forth the Rental Adjustment for the preceding year. If the actual Rental Adjustment for the preceding Adjustment Period exceeds the total of the estimated monthly payments made by Tenant for such Adjustment Period, Tenant shall pay Landlord the amount of the deficiency within ten (10) days of the receipt of the Statement. If such total of estimated payments made exceeds the actual Rental Adjustment for such Adjustment Period, then Tenant shall receive a credit for the difference against payments of Rent next due. If the credit is due from Landlord on the Expiration Date, Landlord promptly shall pay Tenant the amount of the credit, less any Rent then due. The obligations of Tenant and Landlord to make payments required under this § 4.4 shall survive the expiration or earlier termination of the Term of this Lease.

**4.4.1 Changes in Method**. So long as Tenant's obligations hereunder are not materially adversely affected thereby, Landlord reserves the right reasonably to change from time to time the manner or timing of the foregoing payments. In lieu of providing one Statement covering Real Estate Taxes and Operating Expenses, Landlord may provide separate statements, at the same or different times. No delay by Landlord in providing the Statement (or separate statements) shall be deemed a default by Landlord or a waiver of Landlord's right to require payment of Tenant's obligations for actual or estimated Real Estate Taxes or Operating Expenses. In no event shall a decrease in Real Estate Taxes or Operating Expenses below the Base Operating Expenses or Base Real Estate Taxes ever decrease the monthly Base Rent or give rise to a credit in favor of Tenant.

**4.4.2 Proration of Rental Adjustment**. If the Term does not commence on January 1 or does not end on December 31, Tenant's obligations to pay estimated and actual amounts towards Real Estate Taxes and Operating Expenses for such first or final calendar year shall be prorated to reflect the portion of such year(s) included in the Term. Such proration shall be made by multiplying the total estimated or actual (as the case may be) Real Estate Taxes and Operating Expenses for such calendar year(s), as well as the Base Real Estate Taxes and Base Operating Expenses, by a fraction, the numerator of which shall be the number of days of the Term during such calendar year, and the denominator of which shall be three hundred sixty-five (365).

**4.5 GROSS-UP**. If the Building is less than ninety-five percent (95%) occupied during the Base Period or any Adjustment Period, then Operating Expenses and Real Estate Taxes for the Base Period and/or such Adjustment Period shall be "grossed up" to that amount of Operating Expenses and Real Estate Taxes that, using reasonable projections, would normally have been incurred during the Base Period and/or such Adjustment Period if the Building had been ninety-five percent (95%) occupied during the Base Period and/or such Adjustment Period, as determined in accordance with sound accounting and management practices, consistently applied. Only those component elements or items of expense of Operating Expenses and Real Estate Taxes that are affected by variations in occupancy levels shall be grossed up.

**4.6 ADJUSTMENT OF BASE OPERATING EXPENSES**. Notwithstanding anything to the contrary contained in the Lease, the parties agree that Base Operating Expenses and Operating Expenses for any subsequent Adjustment Period (herein called "Subsequent Operating Expenses") shall be subject to further adjustment by Landlord as follows:

**(a) Exclusion of Capital Expenditures**. Landlord may exclude from Base Operating Expenses capital expenditures otherwise permitted, provided Landlord shall also exclude any amortization of such expenditures from Subsequent Operating Expenses.

**(b) Elimination of Recurring Expenses**. If Landlord eliminates from any Subsequent Operating Expenses a category of recurring expenses previously included in Base Operating Expenses, Landlord may subtract such category from Base Operating Expenses commencing with such subsequent Adjustment Period.

**(c) New Recurring Expenses**. If Landlord includes a new category of recurring Subsequent Operating Expenses not previously included in Base Operating Expenses, Landlord shall also include an amount (the "Assumed Base Amount") for such category in Base Operating Expenses commencing in such subsequent Adjustment Period.

**(d) Assumed Base Amount**. The "Assumed Base Amount" under§ 4.6(c) above shall be the annualized amount of expenses for such new category in the first Adjustment Period it is included, reduced by an amount determined in Landlord's sole good faith discretion (but in no event by an amount less than five percent (5% )) for each full or partial Adjustment Period that has elapsed during the Term of the Lease before such Adjustment Period.

**4.7 ADJUSTMENT OF REAL ESTATE TAXES**. If Base Real Estate Taxes are reduced as the result of protest, by means of agreement, as the result of legal proceedings, or otherwise, Landlord may adjust Tenant's obligations for Real Estate Taxes in all years affected by any refund of taxes following the Base Tax Year; and Tenant shall pay Landlord within thirty (30)days after notice any additional amount required by such adjustment for any Adjustment Periods that have theretofore occurred. Tenant shall be entitled to receive a share of any refund or abatement of Real Estate Taxes received by Landlord to the extent of and in proportion to Tenant's actual contribution to the amount of Real Estate Taxes paid by Landlord during the period to which such refund or abatement relates, but in no event shall Tenant be entitled to any refund with respect to Real Estate Taxes paid by Landlord during Tenant's Base Tax Year. If Real Estate Taxes for any Adjustment Period during the Term or any extension thereof shall be increased after payment thereof by Landlord for any reason, including error or reassessment by applicable governmental authorities, Tenant shall pay Landlord upon demand Tenant's Pro Rata Share of such increased Real Estate Taxes. Tenant shall pay increased Real Estate Taxes whether Real Estate Taxes are increased as a result of increases in the assessment or valuation of the Property (whether based on a sale, change in ownership, refinancing of the Property, or otherwise), increases in the tax rates, reduction or elimination of any rollbacks or other deductions available under current law, scheduled reductions of any tax abatement, as a result of the elimination, invalidity, or withdrawal of any tax abatement, or for any other cause whatsoever. Notwithstanding the foregoing, if any Real Estate Taxes shall be paid based on assessments or bills by a governmental authority using a fiscal year other than a calendar year, Landlord may elect to average the assessments or bills for the subject calendar year, based on the number of months of such calendar year included in each such assessment or bill.

**4.8 ALLOCATION WTIHIN COMPLEX**. So long as the Property shall be part of the Complex collectively owned or managed by Landlord or its affiliates or collectively managed by Landlord's managing agent, Landlord may allocate Real Estate Taxes and Operating Expenses within the Complex and between the buildings and structures comprising the Complex and the parcels on which they are located, in accordance with sound accounting and management principles. In the alternative, Landlord shall have the right to determine, in accordance with sound accounting and management principles, Tenant's Pro Rata Share of Real Estate Taxes and Operating Expenses based upon the totals of each of the same for all such buildings and structures, the land constituting parcels on which the same are located, and all related facilities, including common areas and easements, corridors, lobbies, sidewalks, elevators, loading areas, parking facilities, driveways, and other appurtenances and public areas, in which event Tenant's Pro Rata Share shall be based on the ratio of the rentable area of the Premises to the rentable area of all buildings in the Complex.

**4.9 LANDLORD'S RECORDS**. Landlord shall maintain records with respect to Real Estate Taxes and Operating Expenses and determine the same in accordance with sound accounting and management practices, consistently applied. Although this Lease contemplates the computation of Real Estate Taxes and Operating Expenses on a cash basis, Landlord shall make reasonable and appropriate accrual adjustments to ensure that each Adjustment Period includes substantially the same recurring items. Landlord reserves the right to change to a full accrual system of accounting so long as the same is consistently applied and Tenant's obligations are not materially adversely affected. Tenant or its representative shall have the right to examine such records, upon reasonable prior written notice specifying such records Tenant desires to examine, during normal business hours at the place or places where such records are normally kept, by sending such notice no later than forty-five (45) days following the furnishing of the Statement.

**4.10 OTHER TAXES PAYABLE BY TENANT**. In addition to the Base Rent and any other charges to be paid by Tenant hereunder, Tenant shall, as an element of Rent, reimburse Landlord upon demand for any and all taxes payable by Landlord (other than net income taxes) which are not otherwise reimbursable under this Lease, whether or not now customary or within the contemplation of the parties, where such taxes are upon, measured by, or reasonably attributable to (A) the cost or value of Tenant's equipment, furniture, fixtures, and other personal property located at the Premises, or the cost or value of any improvements made in or to the Premises by or for Tenant, regardless of whether title to such improvements is held by Tenant or Landlord; (B) the gross or net Rent payable under this Lease, including any rental or gross receipts tax levied by any taxing authority with respect to the receipt of the Rent hereunder; (C) the possession, leasing, operation, management, maintenance, alteration, repair, use, or occupancy by Tenant of the Premises or any portion thereof; or (D) this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises. Tenant shall pay any rent tax, sales tax, service tax, transfer tax, value-added tax, or any other applicable tax on the Rent or services herein or otherwise respecting this Lease.

**4.11 RENT CONTROL**. If the amount of Rent or any other payment due under this Lease violates the terms of any governmental restrictions on such Rent or payment, then the Rent or payment due during the period of such restrictions shall be the maximum amount allowable under those restrictions. Upon termination of the restrictions, Landlord shall, to the extent it is legally permitted, recover from Tenant the difference between the amounts received during the period of the restrictions and the amounts Landlord would have received had there been no restrictions.

## 5 SECURITY DEPOSIT

**5.1 DEPOSIT FOR SECURITY**. Tenant shall deposit with Landlord the amount of Seventy Thousand Six Hundred Eighty-Three Dollars and Fifty-Two Cents ($70,683.52) (the "Security Deposit") upon Tenant's execution and delivery of this Lease to Landlord. The Security Deposit shall serve as security for the prompt, full, and faithful performance by Tenant of the terms and provisions of this Lease, including the value of future rents as damages in accordance with California Civil Code § 1951.2, as set forth in§ 20.3 below. Landlord shall not be required to keep the Security Deposit separate from Landlord's general funds or pay interest on the Security Deposit.

**5.1.1 Application of Deposit**. In the event that Tenant is in Default hereunder and fails to cure within any applicable time permitted under this Lease, or in the event that Tenant owes any amounts to Landlord upon the expiration of this Lease, Landlord may use or apply the whole or any part of the Security Deposit for the payment of Tenant's obligations hereunder. The use or application of the Security Deposit or any portion thereof shall not prevent Landlord from exercising any other right or remedy provided hereunder or under any Law and shall not be construed as liquidated damages.

**5.1.2 Restoration of Full Deposit**. In the event the Security Deposit is reduced by such use or application, Tenant shall deposit with Landlord, within ten (10) days after written notice, an amount sufficient to restore the full amount of the Security Deposit. If the Premises shall be expanded at any time, or if the Term shall be extended at any increased rate of Rent, the Security Deposit shall thereupon be proportionately increased.

**5.1.3 Disposition of Security Deposit**. After the Expiration Date or any earlier termination of the Lease, any remaining portion of the Security Deposit shall be returned to Tenant after deduction of all amounts due as Rent or otherwise. Tenant expressly waives the provisions of § 1950.7 of the California Civil Code.

## 6 COMPLIANCE WITH LAWS

**6.1 TENANT'S COMPLIANCE WITH LAWS**. Tenant shall use the Premises in compliance with all applicable federal, state, county, and local governmental and municipal laws, statutes, ordinances, rules, regulations, codes, decrees, orders, and other such requirements, and decisions by courts in cases where such decisions are considered binding precedents in the State of California (the "State"), and decisions of federal courts applying the laws of the State (collectively "Laws"). Tenant shall, at its sole cost and expense, promptly comply with each and all of such Laws, and also with the requirements of any board of fire underwriters or other similar body now or hereafter constituted to deal with the condition, use, or occupancy of the Premises, except in the case of required structural changes not triggered by Tenant's change in use of the Premises or Tenant's alterations, additions, or improvements therein. Tenant shall comply with all applicable Laws regarding the physical condition of the Premises, but only to the extent that the applicable Laws pertain to the particular manner in which Tenant uses the Premises or the particular use to which Tenant puts the Premises, if different from that permitted under Article 2 of this Lease. Tenant shall also comply with all applicable Laws which do not relate to the physical condition of the Premises and with which only the occupant can comply, such as laws governing maximum occupancy, workplace smoking, VDT regulations, and illegal business operations, such as gambling. The judgement of any court of competent jurisdiction or the admission of Tenant in any judicial action, regardless of whether Landlord is a party thereto, that Tenant has violated any of such Laws shall be conclusive of that fact as between Landlord and Tenant.

**6.1.1 Code Costs**. Notwithstanding anything to the contrary in this Article 6, if the requirement of any public authority obligates either Landlord or Tenant to expend money in order to bring the Premises and/or any area of the Property into compliance with Laws as a result of (a) Tenant's particular use or alteration of the Premises; (b) Tenant's change in the use of the Premises; (c) the manner of conduct of Tenant's business or operation of its installations, equipment, or other property therein; (d) any cause or condition created by or at the instance of Tenant, other than by Landlord's performance of any work for or on behalf of Tenant; or (e) breach of any of Tenant's obligations hereunder, then Tenant shall bear all costs ("Code Costs") of bringing the Premises and/or Property into compliance with Laws, whether such Code Costs are related to structural or nonstructural elements of the Premises or Property.

**6.2 LANDLORD'S COMPLIANCE WITH LAWS**. Landlord represents that on the Commencement Date Landlord has no actual knowledge of any violation of any applicable Laws respecting the Premises. During the Term Landlord shall comply with all applicable Laws regarding the Premises and Property, except to the extent Tenant must comply under§ 6.1 above.

## 7 HAZARDOUS MATERIALS

**7.1 REGULATION OF HAZARDOUS MATERIALS**. Tenant shall not transport, use, store, maintain, generate, manufacture, handle, dispose, release, or discharge any "Hazardous Material" (as defined below) upon or about the Property, nor permit Tenant's employees, agents, contractors, and other occupants of the Premises to engage in such activities upon or about the Property. However, the foregoing provisions shall not prohibit the transportation to and from, and use, storage, maintenance, and handling within, the Premises of substances customarily used in offices, provided all of the following conditions are met:

**(a)** such substances shall be used and maintained only in such quantities as are reasonably necessary for such permitted use of the Premises, strictly in accordance with applicable Laws and the manufacturers' instructions therefor;

**(b)** such substances shall not be disposed of, released, or discharged on the Property and shall be transported to and from the Premises in compliance with all applicable Laws, and as Landlord shall reasonably require;

**(c)** if any applicable Laws or Landlord's trash removal contractor requires that any such substances be disposed of separately from ordinary trash, Tenant shall make arrangements at Tenant's expense for such disposal directly with a qualified and licensed disposal company at a lawful disposal site (subject to scheduling and approval by Landlord), and shall ensure that disposal occurs frequently enough to prevent unnecessary storage of such substances in the Premises; and

**(d)** any remaining such substances shall be completely, properly, and lawfully removed from the Property upon expiration or earlier termination of this Lease.

**7.2 DEFINITION OF HAZARDOUS MATERIAL**. The term "Hazardous Material" for purposes hereof shall mean any chemical, substance, material, or waste or component thereof which is now or hereafter listed, defined, or regulated as a hazardous or toxic chemical, substance, material, or waste or component thereof by any federal, state, or local governing or regulatory body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by any such body, or for which any such body has adopted any requirements for the preparation or distribution of an MSDS.

**7.3 NOTIFICATION OF LANDLORD**. Tenant shall promptly notify Landlord of (A) any enforcement, cleanup, or other regulatory action taken or threatened by any governmental or regulatory authority with respect to the presence of any Hazardous Material on the Premises or the migration thereof from or to other property; (B) any demands or claims made or threatened by any party against Tenant or the Premises relating to any loss or injury resulting from any Hazardous Material on or from the Premises; and (C) any matters where Tenant is required by law to give a notice to any governmental or regulatory authority respecting any Hazardous Material on the Premises. Landlord shall have the right (but not the obligation) to join and participate, as a party, in any legal proceedings or actions affecting the Premises initiated in connection with any environmental, health, or safety law.

**7.4 LIST OF HAZARDOUS MATERIALS**. At such times as Landlord may reasonably request, Tenant shall provide Landlord with a written list identifying any Hazardous Material then used, stored, or maintained upon the Premises, the use and approximate quantity of each such material, a copy of any material safety data sheet ("MSDS") issued by the manufacturer thereof, written information concerning the removal, transportation, and disposal of the same, and such other information as Landlord may reasonably require or as may be required by law.

**7.5 CLEANUP**. If any Hazardous Material is released, discharged or disposed of by Tenant or any other occupant of the Premises, or their employees, agents, or contractors, on or about the Property in violation of the foregoing provisions, Tenant shall immediately, properly, and in compliance with applicable Laws clean up and remove the Hazardous Material from the Property and any other affected property and clean or replace any affected personal property (whether or not owned by Landlord), at Tenant's expense. Such clean up and removal work shall be subject to Landlord's prior written approval (except in emergencies), and shall include any testing, investigation, and the preparation and implementation of any remedial action plan required by any governmental body having jurisdiction or reasonably required by Landlord. If Tenant shall fail to comply with the provisions of this § 7.2 within five (5) days after written notice by Landlord, or such shorter time as may be required by Laws or in order to minimize any hazard to persons or property, Landlord may (but shall not be obligated to) arrange for such compliance directly or as Tenant's agent through contractors or other parties selected by Landlord, at Tenant's expense (without limiting Landlord's other remedies under this Lease or applicable Laws).

**7.6 CASUALTY DAMAGE**. If any Hazardous Material is released, discharged, or disposed of on or about the Property and such release, discharge, or disposal is not caused by Tenant or other occupants of the Premises, or their employees, agents, or contractors, such release, discharge, or disposal shall be deemed casualty damage under Article 15 to the extent that the Premises or common areas serving the Premises are affected thereby; in such case, Landlord and Tenant shall have the obligations and rights respecting such casualty damage provided under Article 15 of this Lease.

**7.7 REFRIGERANT**. Tenant shall not install any refrigerant-containing systems or equipment, including refrigerators, freezers, supplemental HVAC systems or self-contained air conditioners, without Landlord's prior approval, which Landlord may withhold in its sole discretion. Unless Tenant shall have obtained Landlord's prior written approval to install existing equipment after an inspection, at Tenant's sole cost and expense, by Landlord's engineer for defects and proper proposed installation in the Premises, all refrigerant-containing equipment and/or systems which Tenant installs in the Premises shall be new. Whether Tenant's refrigerant-containing equipment or systems are defective and are properly installed shall be determined at the sole discretion of Landlord's engineer. If Tenant wishes to install any refrigerant-containing equipment or systems, Tenant shall obtain and provide Landlord with copies of all required permits associated with such equipment or systems. Notwithstanding the foregoing, Tenant shall have the right, subject to Landlord's reasonable approval, to install one or more standard food refrigerators in the Premises.

**7.7.1 Removal of Refrigerant**. Notwithstanding anything to the contrary in this Lease, Tenant shall remove all refrigerant and refrigerant-containing equipment and/or systems installed in the Premises by or on behalf of Tenant prior to the Expiration Date of this Lease. Prior to the removal of any such refrigerant or refrigerant-containing equipment and/ or systems, Tenant shall submit to Landlord for Landlord's approval, the names of Tenant's contractors and all plans and specifications for such removal. Tenant and Tenant's contractors shall comply with all legal requirements, industry practices and rules established by Landlord in performing such removal work. Tenant shall repair any damage to the Property or the Systems and Equipment associated with such removal, and Tenant shall be responsible for the costs associated with restoring the Property to the condition which existed immediately prior to any modification undertaken by Landlord in order to accommodate Tenant's refrigerant-containing equipment or systems.

## 8 SERVICES AND UTILITIES

**8.1 LANDLORD'S SERVICES**. Landlord agrees to provide, on the terms and conditions specified herein, the following services and Utilities for Tenant's use and consumption in the Premises, the cost of which shall be included in Operating Expenses and reimbursed to Landlord in accordance with§ 4.1 above:

**(a) Electricity**. Electricity for standard office lighting fixtures and for equipment and accessories customary for offices, provided (i) the connected electrical load of all the same does not exceed an average of four (4) watts per usable square foot of the Premises (or such lesser amount as may be available, based on the safe and lawful capacity of the existing electrical circuit(s) and facilities serving the Premises); (ii) the electricity will be at nominal 120 volts, single phase (or 110 volts, depending on available service in the Building); and (iii) the safe and lawful capacity of the existing electrical circuit(s) serving the Premises is not exceeded. Landlord will permit its electric feeders, risers, and wiring servicing the Premises to be used by Tenant to the extent available and safely capable of being used for such purpose.

**(b) Telecommunications Interface**. Interface with the telephone network at the demarcation point or minimum point of entry ("MPOE") supplied by the local regulated public utility by means of Landlord's INC consisting of cable pairs with a capacity consistent with the engineering standards to which the Building was designed.

**(c) HVAC**. Heat, ventilation, and air-conditioning ("HVAC") to provide a temperature required, in Landlord's reasonable opinion and in accordance with applicable Laws, for the comfortable occupancy of the Premises during business hours (as defined in§ 8.1.1 below). Landlord shall not be responsible for inadequate air-conditioning or ventilation to the extent the same occurs because Tenant uses any item of equipment consuming more than 500 watts at rated capacity without providing adequate air-conditioning and ventilation therefor.

**(d) Water**. Water for drinking, lavatory and toilet purposes at those points of supply provided for nonexclusive general use of other tenants at the Property.

**(e) Janitorial Services**. Customary office cleaning and trash removal service Monday through Friday or Sunday through Thursday in and about the Premises.

**(f) Elevator Services**. Operatorless passenger elevator service and freight elevator service (if the Property has such equipment serving the Premises, and subject to scheduling by Landlord) in common with Landlord and other tenants and their contractors, agents, and visitors.

**8.1.1 Business Hours**. The term *business hours* in this Lease shall mean the hours from 8:00 a.m. until 6:00 p.m. on Monday through Friday and from 9:00 a.m. until 1:00 p.m. on Saturday throughout the year, except for New Year's Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and any other federally-observed holiday which may be created during the Term ("Holidays").

**8.2 ADDITIONAL ELECTRICAL CAPACITY**. Any additional risers, feeders, or other equipment or service proper or necessary to supply Tenant's electrical requirements will be installed by Landlord, upon written request of Tenant, at the sole cost and expense of Tenant, if, in Landlord's sole judgement, the same are necessary and will not cause permanent damage or injury to the Property, the Premises, or the Systems and Equipment or cause or create a dangerous or hazardous condition or entail excessive or unreasonable alterations, repairs, or expense or interfere with or disturb other tenants or occupants. Rigid conduit only will be allowed.

**8.2.1 Approved Electrical Load**. Tenant agrees not to connect any additional electrical equipment of any type to the building electric distribution system, beyond that on Tenant's approved plans for initial occupancy, other than lamps, typewriters, and other office machines which consume comparable amounts of electricity or other electrical equipment which in the aggregate consumes the same amount of electricity as those approved for initial occupancy and will not result in any overload of electrical circuits, lines, or wiring, without Landlord's prior written consent. In no event shall Tenant use or install any fixtures, equipment, or machines the use of which in conjunction with other fixtures, equipment, and machines in the Premises would result in an overload or the electrical circuits servicing the Premises. Tenant covenants and agrees that at all times its use of electric current shall never exceed the capacity of the feeders to the Building or the risers or wiring installation existing at the time in question.

**8.3 ADDITIONAL TELECOMMUNICATIONS CAPACITY**. If Tenant desires any telecommunications capacity in excess of that available as of the Commencement Date in the form of the INC between the MPOE and the telephone closet nearest the Premises and provided pursuant to§ 8.1 above, Tenant shall bear the cost of installing additional risers or INC or replacing existing INC serving the Premises pursuant to Article 9 below.

**8.4 REPLACEMENT BULBS AND TUBES**. Tenant shall furnish, install, and replace, as required, all non-Building-standard lighting tubes, lamps, bulbs, and ballasts required in the Premises, at Tenant's sole cost and expense. All lighting tubes, lamps, bulbs, and ballasts so installed become Landlord's property upon the expiration or sooner termination of this Lease.

**8.5 TWENTY-FOUR HOURS ACCESS**. Subject to the provisions of § 8.8, Tenant, its employees, agents, and invitees shall have access to the Premises twenty-four (24) hours a day, seven (7) days a week. Landlord may restrict access outside of business hours by requiring persons to show a badge or identification card issued by Landlord. Landlord shall not be liable for denying entry to any person unable to show the proper identification. Landlord may without liability temporarily close the Building if required because of a life-threatening or Building-threatening situation.

**8.6 EXTRA SERVICES**. Landlord shall, subject to all applicable Laws, seek to provide such utilities or services in excess of those Landlord is required to provide under§ 8.1 above as Tenant may from time to time request, if the same are reasonable and feasible for Landlord to provide and do not involve modifications or additions to the Property or the Systems and Equipment and if Landlord shall receive Tenant's request within a reasonable period prior to the time such extra utilities or services are required. Landlord may comply with written or oral requests by any officer or employee of Tenant, unless Tenant shall notify Landlord of, or Landlord shall request, the names of authorized individuals (up to three (3) for each floor on which the Premises are located) and procedures for written requests. Tenant shall, for such extra utilities or services, pay such charges as Landlord shall from time to time establish.

**8.6.1 Extraordinary Service Usage**. If Tenant shall utilize Building services for the Premises at any time other than during business hours, Landlord shall furnish such extraordinary services (excluding air-conditioning, except as provided below) at Landlord's then-current prevailing rate for such services. In addition to the foregoing services, if Tenant shall require air-conditioning service for the Premises at any time other than during business hours, Landlord shall, upon reasonable advance notice from Tenant, furnish such after-hours air-conditioning service at Landlord's then-current prevailing rate for such services as a separate charge; provided, however, in the event Tenant requests such after-hours air-conditioning service at a time not immediately preceding or immediately succeeding times when "regular hours" service is being furnished hereunder, then Tenant must request not less than five (5) hours of after-hours air-conditioning service. Notwithstanding anything contained herein to the contrary, Landlord's prevailing rate for the extraordinary services described herein shall be subject to increase from time to time as Landlord may reasonably determine.

**8.6.2 Payment for Excess Usage**. All charges for extra utilities or services or those requested outside business hours shall be due at the same time as the installment of Base Rent with which the same are billed, or if billed separately, shall be due within twenty (20) days after such billing.

**8.6.3 Changes in HVAC System**. Use of the Premises, or any part thereof, in a manner exceeding the design conditions (including occupancy and connected electrical load) for the heating or cooling units in the Premises, or rearrangement of partitioning which interferes with normal operation of the HVAC system in the Premises, may require changes in the HVAC system servicing the Premises. Such changes shall be made by Tenant, at its expense, as Tenant's Changes pursuant to Article 9. Tenant shall not change or adjust any closed or sealed thermostat or other element of the HVAC system without Landlord's express prior written consent.

**8.6.4 Separate Metering**. Landlord may install and operate meters or any other reasonable system for monitoring or estimating any services or utilities used by Tenant in excess of those required to be provided by Landlord under this Article 8 (including a system for Landlord's engineer reasonably to estimate any such excess usage). If such system indicates such excess services or utilities, Tenant shall pay Landlord's reasonable charges for installing and operating such system and any supplementary air-conditioning, ventilation, heat, electrical, or other systems or equipment (or adjustments or modifications to the existing Systems and Equipment), and Landlord's reasonable charges for such amount of excess services or utilities used by Tenant. If Tenant's use of extra utilities or services causes Landlord's regulated baseline quantities of water, gas, electricity, or any other utility or service to be exceeded, Tenant shall pay for such excess quantities of such utilities or services at the rate which is imposed upon Landlord for quantities in excess of the regulated baseline. In addition, Tenant shall pay prior to delinquency any fine or penalty which may be imposed upon or assessed against Landlord or the Building or the Property by virtue of Tenant's excess usage of any services or utilities, including water, gas, and electricity.

**8.6.5 Supplemental HVAC**. If Tenant operates a supplemental HVAC unit in the Premises for cooling of a dedicated server room or otherwise, whether such unit is was existing on the Commencement Date, installed by Landlord as part of Landlord's Work to prepare the Premises for Tenant's occupancy, or installed later by Tenant as a Tenant's Change, Tenant shall pay to Landlord as an extra service charge all costs of operating such supplementary HVAC unit in accordance with the provisions of § 8.6.4 above as determined by separate metering or the reasonable estimate of Landlord's engineer.

**8.7 INTERRUPTION OF SERVICES**. Landlord does not warrant that any services or utilities provided hereunder for Tenant's use in the Premises will be free from shortages, failures, variations, or interruptions caused by repairs, maintenance, replacements, improvements, alterations, changes of service, strikes, lockouts, labor controversies, accidents, inability to obtain services, fuel, steam, water or supplies, governmental requirements or requests, or other causes beyond Landlord's reasonable control, including interference with light or other incorporeal hereditaments and any interruption in services or any failure to provide services to Landlord by a designated utility company at the demarcation point at which Landlord accepts responsibility for such service or at any point prior thereto, which interference impedes Landlord in furnishing plumbing, HVAC, electrical, sanitary, life safety, elevator, telecommunications, or other Building services, utilities, or the Systems and Equipment. None of the same shall be deemed an eviction or disturbance of Tenant's use and possession of the Premises or any part thereof, shall render Landlord liable to Tenant for abatement of Rent, or shall relieve Tenant from performance of Tenant's obligations under this Lease. Landlord in no event shall be liable for damages by reason of loss of profits, business interruption, or other compensatory or consequential damages.

**8.8 SAFETY AND SECURITY DEVICES, SERVICES, AND PROGRAMS**. The parties acknowledge that safety and security devices, services, and programs provided by Landlord, if any, while intended to deter crime and ensure safety, may not in given instances prevent theft or other criminal acts or ensure safety of persons or property, and such devices, services and programs shall not under any circumstances be deemed to be a guaranty, representation, or warranty by Landlord to Tenant or any third parties as to the safety or protection of person or property. The risk that any safety or security device, service, or program may not be effective, or may malfunction, or be circumvented by a criminal, is assumed by Tenant with respect to Tenant's property and interests; and Tenant shall obtain insurance coverage to the extent Tenant desires protection against such criminal acts and other losses, as further described in Article 14. Tenant agrees to cooperate in any reasonable safety or security program developed by Landlord or required by Law.

## 9 TENANT'S CHANGES

**9.1 TENANTS REQUESTED CHANGES**. Tenant may, subject to § 9.2 below, from time to time during the Term of this Lease, at its expense, make such alterations, additions, installations, substitutions, improvements, and decorations (collectively "Tenant's Changes") in and to the Premises as Tenant may reasonably consider necessary for the conduct of its business in the Premises (except for changes which would require modification of the Property outside the Premises), on the following conditions:

**(a)** the outside appearance or the strength of the Building or of any of its structural parts shall not be affected, and Tenant shall cause no penetration of the roof or the exterior fabric of the Building;

**(b)** no part of the Building outside of the Premises shall be physically affected;

**(c)** the proper functioning of any of the Systems and Equipment shall not be adversely affected, and the usage of such systems by Tenant shall not be increased;

**(d)** no such change shall require the addition of new INC riser cable or expand the number of telephone pairs dedicated to the Premises by the Buildings' telecommunications engineering design;

**(e)** in performing the work involved in making such changes, Tenant shall be bound by and observe all of the conditions and covenants contained in the following sections of this Article 9; and

**(f)** with respect to Tenant's Changes, Tenant shall make all arrangements for, and pay all expenses incurred in connection with, use of the freight elevators servicing the Premises.

**9.2 PLANS AND APPROVAL**. Before proceeding with any Tenant's Changes, Tenant shall advise Landlord thereof and arrange a meeting with the Building Manager, the Building Architect, and/ or the Building Contractor, as required by Landlord in relation to the scope of the proposed Changes. Except in extraordinary circumstances which would reasonably require an exception, all work to be performed in the Building shall be performed by the Building Contractor on the basis of plans and drawings prepared by the Building Architect. If Landlord grants permission for Tenant to utilize another contractor and/or architect for its Changes, before proceeding with any Tenant's Changes, Tenant shall submit to Landlord plans and specifications and all changes and revisions thereto for the work to be done for Landlord's reasonable approval; and Tenant shall, upon demand of Landlord, pay to Landlord the reasonable costs incurred and paid to third parties by Landlord for the review of such plans and specifications and all changes and revisions thereto by its architect, engineer, and other consultants. Landlord may as a condition of its approval require Tenant to make reasonable revisions in and to the plans and specifications. Landlord may require Tenant to post a bond or other security reasonably satisfactory to Landlord to insure the completion of such change. If Landlord consents to any Tenant's Changes or supervises the work of constructing any

Tenant's Changes, such consent or supervision shall not be deemed a warranty as to the adequacy of the design, workmanship, or quality of materials, and Landlord hereby expressly disclaims any responsibility or liability for the same. Landlord shall under no circumstances have any obligation to repair, maintain, or replace any portion of such work.

**9.2.1 As-Built Plans**. Within thirty (30) days after completion of Tenant's Changes requiring the submission of plans to Landlord, Tenant shall furnish to Landlord a complete set of "as-built" plans and specifications.

**9.3 PERMITS AND PERFORMANCE**. Tenant, at its expense, shall obtain all necessary governmental permits and certificates for the commencement and prosecution of Tenant's Changes and for final approval thereof upon completion and shall furnish copies thereof to Landlord. Tenant shall cause Tenant's Changes to be performed in compliance therewith and with all applicable Laws and requirements of public authorities and with all applicable requirements of insurance bodies, and in good and workmanlike manner, using new materials and equipment at least equal in quality and class to the original installations in the Property. Tenant's Changes shall be performed in such manner as not unreasonably to interfere with, delay, or impose any additional expense upon Landlord in the renovation, maintenance, or operation of the Property or any portion thereof, unless Tenant shall indemnify Landlord therefor to the latter's reasonable satisfaction.

**9.4 CONTRACTORS**. All electrical, mechanical, and plumbing work in connection with Tenant's Changes shall be performed by Landlord's contractors at Tenant's expense. If Tenant shall request any electrical, mechanical, or plumbing work in connection with Tenant's Changes, Landlord shall request Landlord's contractors to furnish Tenant with prices to perform the same prior to prosecuting same. In addition to the foregoing, and notwithstanding anything to the contrary in this Article 9, Landlord may, at Landlord's option, require that the work of constructing any Tenant's Changes be performed by Landlord's contractor, in which case the cost of such work shall be paid for before commencement of the work.

**9.5 SUPERVISION AND FEE**. Landlord may require that all work of constructing Tenant's Changes be performed under Landlord's supervision. If Landlord does not elect to require that Tenant use Landlord's contractor, and if Tenant chooses to use its own contractor for the work of constructing Tenant's Changes, Tenant shall pay to Landlord upon completion of any such work by Tenant's contractor an administrative fee of fifteen percent (15%) of the cost of the work, to cover Landlord's overhead in reviewing Tenant's plans and specifications and performing any supervision of the work of Tenant's Changes. If Tenant chooses to use Landlord's contractor for such work, Tenant shall pay to Landlord upon completion an administrative fee equal to five percent (5%) of the cost of the work.

**9.6 RESTORATION OF FIXTURES**. If any of Tenant's Changes shall involve the removal of any fixtures, equipment, or other property in the Premises which are not Tenant's Property (as defined in Article 10), such fixtures, equipment, or other property shall be promptly replaced, at Tenant's expense, with new fixtures, equipment, or other property (as the case may be) of like utility and at least equal value, unless Landlord shall otherwise expressly consent in writing; and Tenant shall, upon Landlord's request, store and preserve, at Tenant's sole cost and expense, any such fixtures, equipment or property so removed and shall return same to Landlord upon the expiration or sooner termination of this Lease.

**9.7 MECHANIC'S LIENS**. Tenant shall keep the Property and Premises free from any mechanic's, materialman' s, or similar liens or other such encumbrances, including the liens of any security interest in, conditional sales of, or chattel mortgages upon, any materials, fixtures, or articles so installed in and constituting part of the Premises, in connection with any Tenant's Changes on or respecting the Premises not performed by or at the request of Landlord and shall indemnify, defend, protect, and hold Landlord harmless from and against any claims, liabilities, judgements, or costs (including attorneys' fees) arising

out of the same or in connection with any such lien, security interest, conditional sale or chattel mortgage or any action or proceeding brought thereon. Tenant shall give Landlord written notice at least twenty (20) days prior to the commencement of work on any Tenant's Change in the Premises (or such additional time as may be necessary under applicable Laws), in order to afford Landlord the opportunity of posting and recording appropriate notices of nonresponsibility. Tenant shall remove any such lien or encumbrance by bond or otherwise within thirty (30) days after written notice by Landlord; and if Tenant shall fail to do so, Landlord may pay the amount necessary to remove such lien or encumbrance, without being responsible for investigating the validity thereof. The amount so paid shall be deemed Additional Rent under this Lease payable upon demand, without limitation as to other remedies available to Landlord under this Lease. Nothing contained in this Lease shall authorize Tenant to do any act which shall subject Landlord's title to the Property or Premises to any liens or encumbrances, whether claimed by operation of law or express or implied contract. Any claim to a lien or encumbrance upon the Property or Premises arising in connection with any Work on or respecting the Premises not performed by or at the request of Landlord shall be null and void, or, at Landlord's option, shall attach only against Tenant's interest in the Premises and shall in all respects be subordinate to Landlord's title to the Property and Premises.

**9.8 NOTICES OF VIOLATION**. Tenant, at its expense, and with diligence and dispatch, shall procure the cancellation or discharge of all notices of violation arising from or otherwise connected with Tenant's Changes which shall be issued by any governmental, public, or quasi-public authority having or asserting jurisdiction. However, nothing herein contained shall prevent Tenant from contesting, in good faith and at its own expense, any such notice of violation, provided that Landlord's rights hereunder are in no way compromised or diminished thereby.

**9.9 INDUSTRIAL RELATIONS**. Tenant agrees that the exercise of its rights pursuant to the provisions of this Article 9 or any other provision of this Lease shall not be done in a manner which would create any work stoppage, picketing, labor disruption, or dispute or violate Landlord's union contracts affecting the Property and/or Complex or interfere with the business of Landlord or any Tenant or occupant of the Building. Tenant shall, immediately upon notice from Landlord, cease any activity, whether or not permitted by this Lease, giving rise to such condition. If Tenant fails to do so, Landlord, in addition to any rights available to it under this Lease and pursuant to Law, shall have the right to an ex parte injunction without notice.

## 10 TENANT'S PROPERTY

**10.1 FIXTURES AND IMPROVEMENTS**. All fixtures, equipment, improvements, alterations, and appurtenances attached to or built into the Premises at the commencement of or during the Term of this Lease, including cabinets, sinks, faucets, appliances, hot water heaters, etc. (collectively "Improvements"), whether or not by or at the expense of Tenant, shall be and remain a part of the Premises, shall be deemed the property of Landlord, and shall not be removed by Tenant, except as expressly provided in Article 11 below.

**10.2 TENANT'S PROPERTY AND TRADE FIXTURES**. All movable partitions, trade fixtures, office machinery and equipment, communications equipment, and computer equipment (whether or not attached to or built into the Premises) which are installed in the Premises by or for the account of Tenant, without expense to Landlord and which can be removed without structural damage to the Property, and all furniture, furnishings, and other articles of movable personal property owned by Tenant and located in the Premises (collectively "Tenant's Property") shall be and shall remain the property of Tenant and may be removed by it at any time during the Term of this Lease; provided that if any of Tenant's Property is removed, Tenant or any party or person entitled to remove same shall repair or pay the cost of repairing any damage to the Premises or to the Property resulting from such removal. Any equipment or other property for which Landlord shall have granted any allowance or credit to Tenant or which has replaced such items originally provided by Landlord at Landlord's expense shall not be deemed to have been installed by or for the account of Tenant, without expense to Landlord, and shall not be considered Tenant's Property.

## 11 CONDITION UPON SURRENDER

**11.1 CONDITION AND RESTORATION**. At or before the Expiration Date or the date of any earlier termination of this Lease, or as promptly as practicable using Tenant's best efforts after such an earlier termination date, Tenant, at its expense, shall do all of the following:

**(a)** surrender possession of the Premises in the condition required under§ 12.1 below, ordinary wear and tear excepted;

**(b)** surrender all keys, any key cards, and any parking stickers or cards to Landlord and give Landlord in writing the combinations of any locks or vaults then remaining in the Premises;

**(c)** remove from the Premises all of Tenant's Property, including any data wiring and cabling that Tenant has installed, except such items thereof as Tenant shall have expressly agreed in writing with Landlord were to remain and to become the property of Landlord; and

**(d)** fully repair any damage to the Premises or the Property resulting from such removal.

Tenant's obligations herein shall survive the expiration or earlier termination of the Lease, unless expressly provided to the contrary herein. All Improvements and other items in or upon the Premises (except Tenant's Property), whether installed by Tenant or Landlord, shall be Landlord's property and shall remain upon the Premises, all without compensation, setoff, allowance, or credit to Tenant; provided, however, that if prior to such expiration or earlier termination Landlord so directs by notice, Tenant shall promptly remove such of the Improvements in the Premises as are designated in such notice and shall restore the Premises to their condition prior to the installation of such Improvements. Notwithstanding the foregoing, Landlord shall not require removal of customary office improvements installed as part of Landlord's Work under § 3.2 above (except as expressly provided to the contrary therein), or installed by Tenant with Landlord's written approval (except as expressly required by Landlord in connection with granting such approval).

**11.2 TENANT'S FAILURE TO REMOVE OR RESTORE**. If Tenant shall fail to perform any repairs or restoration or fail to remove any items from the Premises as required under this Article 11, Landlord may do so, and Tenant shall pay Landlord the cost thereof upon demand. All property removed from the Premises by Landlord pursuant to any provisions of this Lease or any Law may be handled or stored by Landlord at Tenant's expense, and Landlord shall in no event be responsible for the value, preservation, or safekeeping thereof. All property not removed from the Premises or retaken from storage by Tenant within thirty (30) days after expiration or earlier termination of this Lease or Tenant's right to possession shall at Landlord's option be conclusively deemed to have been conveyed by Tenant to Landlord as if by bill of sale without payment by Landlord. Unless prohibited by applicable Laws, Landlord shall have a lien against such property for the costs incurred in removing and storing the same.

## 12 REPAIRS AND MAINTENANCE

**12.1 TENANT'S CARE OF PREMISES**. Except for customary cleaning and trash removal provided by Landlord under § 8.1 above and damage covered under Article 15, Tenant shall keep the Premises in good and sanitary condition, working order, and repair, including carpet, wall-covering, doors pertinent to and within the Premises, plumbing, all telecommunications cables and wiring within Tenant's Premises ("IW") from the interface of such IW with the INC, and other fixtures, equipment, alterations, and improvements, whether installed by Landlord or Tenant. In addition, Tenant, at its expense, shall promptly make all repairs, ordinary or extraordinary, interior or exterior, structural or otherwise, in and about the Premises and the Property, as shall be required by reason of (a) the performance or existence of Tenant's Work or Tenant's Changes; (b) the installation, use, or operation of Tenant's Property in the Premises; (c) the moving of Tenant's Property in or out of the Building; or (d) the misuse or neglect of Tenant or any of its employees, agents, or contractors. Tenant, at its expense, shall replace all scratched, damaged, or broken doors or other glass in or about the Premises and shall be responsible for all repairs, maintenance, and replacement of wall and floor coverings in the Premises and for the repair and maintenance of all lighting fixtures therein. All repairs except for emergency repairs made by Tenant as provided herein shall be performed by contractors or subcontractors approved in writing by Landlord prior to commencement of such repairs, which approval shall not be unreasonably withheld or delayed. If Tenant does not promptly make such arrangements, Landlord may, but need not, make such repairs, maintenance, and replacements, and the costs paid or incurred by Landlord therefor shall be reimbursed by Tenant promptly after request by Landlord.

**12.2 LANDLORD'S CARE OF PROPERTY**. Landlord, at its expense, shall keep and maintain the structural elements of the Building, the common areas of the Property, and the Systems and Equipment serving the Premises in good working order, condition, and repair and shall make all repairs, structural and otherwise, interior and exterior, as and when needed in or about the Premises, except for those repairs for which Tenant is responsible pursuant to § 12.1 above or any other provisions of this Lease. Landlord shall maintain and repair all INC in the Building, and Tenant shall have no right to make repairs to INC. The cost of Landlord's maintenance and repairs pursuant to this Article 12 shall be reimbursed to Landlord to the extent provided in Article 4 above.

**12.3 WAIVER BY TENANT**. Tenant waives the benefits of any statute now or hereafter in effect which would otherwise afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition, and repair.

## 13 RULES AND REGULATIONS

**13.1 OBSERVANCE AND MODIFICATION**. Tenant and its employees and agents shall faithfully observe and comply with the Rules and Regulations attached hereto as **Exhibit C** (the "Rules") and such reasonable changes therein (whether by modification, elimination, or addition) as Landlord at any time or times hereafter may make and communicate in writing to Tenant, so long as such changes do not unreasonably affect the conduct of Tenant's business in the Premises, except as required by any applicable Law; provided, however, that in case of any conflict or inconsistency between the provisions of this Lease and any of the Rules as originally promulgated or as changed, the provisions of this Lease shall control.

**13.2 APPLICATION TO TENANT**. Nothing in this Lease shall be construed to impose upon Landlord any obligation to Tenant to enforce the Rules or the terms, covenants, or conditions in any other lease, as against any other tenant, and Landlord shall not be liable to Tenant for violation of the same by any other tenant or its employees, agents, or visitors.

## 14 INSURANCE AND INDEMNIFICATION

**14.1 TENANT'S INSURANCE**. Tenant shall obtain and maintain in effect at all times during Tenant's possession of the Premises the following insurance coverages and policies:

**14.1.1 Liability Insurance**. Tenant shall maintain a policy of commercial general liability insurance, which shall include coverages for (a) personal injury; (b) broad-form contractual liability; and (c) broad-form property damage liability. The minimum limits of liability shall be a combined single limit with respect to each occurrence of not less than Two Million Dollars ($2,000,000) and an aggregate limit of not less than Three Million Dollars ($3,000,000). Such limits may be met through any combination of primary and excess liability policies, provided that any umbrella or excess liability policy shall be in following form. The policy shall contain a cross-liability endorsement and a severability of interest clause. Tenant shall increase the insurance coverage as required by Landlord's lender or if Landlord's insurance consultant believes that the coverage is not adequate.

**14.1.2 Tenant's Business Auto Liability Insurance**. Tenant shall maintain business auto liability insurance with an "any auto, owned, non-owned, and hired" endorsement in an amount not less than Two Million Dollars ($2,000,000) combined single limit.

**14.1.3 Tenant's Business Personal Property Insurance**. Tenant shall maintain on all of its business personal property, including valuable business papers and accounts receivable; operating supplies; inventory; and furniture, fixtures, and equipment (whether owned, leased, or rented) (collectively "Business Personal Property") an "all risk" property damage insurance policy including coverages for sprinkler leakage and containing an agreed amount endorsement (or, if applicable, a business owner's policy with a no-coinsurance provision) in an amount not less than one hundred percent (100%) of the full replacement cost valuation of such Business Personal Property. The proceeds from any such policy shall be used by Tenant for the replacement of such Business Personal property.

**14.1.4 Workers' Compensation Insurance**. Tenant shall maintain workers' compensation insurance as required by law and employer's liability insurance in an amount not less than Five Hundred Thousand Dollars ($500,000).

**14.1.5 Business Interruption/Extra Expense Insurance**. Tenant shall maintain business interruption or (if applicable) contingent business interruption and extra expense insurance in such amounts as will reimburse Tenant for direct or indirect loss of earnings and incurred costs attributable to the perils commonly covered by Tenant's property insurance described in § 14.1.3 above but in no event less than the average total of Tenant's annual net profits plus annual continuing business expenses during the three-year period immediately preceding such interruption or loss. Such insurance will be carried with the same insurer that issues the insurance for Tenant's Business Personal Property pursuant to§ 14.1.2 above.

**14.1.6 Other Coverage**. Tenant, at its cost, shall maintain such other insurance as Landlord may reasonably require from time to time, but in no event may Landlord require any other insurance which is not then available at commercially reasonable rates.

**14.2 TENANT'S INSURANCE CRITERIA**. All insurance required to be maintained by Tenant under this Lease shall conform to the following criteria:

**(i)** Tenant's insurance shall be issued by insurance companies authorized to do business in the State of California with a financial rating of at least A-:VIII for any property insurance and at least A-:Vlll for any liability insurance, as rated in the most recent edition of *Best's Insurance Reports*.

**(ii)** Tenant's commercial general liability insurance shall be issued as primary and noncontributory to any insurance maintained by Landlord.

**(iii)** Tenant's liability insurance policies shall name Tenant as the insured and Landlord, Landlord's agents, and any Lessors and Holders (as such terms are defined in § 18.1 below) whose names shall have been furnished to Tenant as additional insureds.

**(iv)** Should Tenant receive a notice of cancellation from the insurer of any of the insurance required in this Lease, Tenant shall notify Landlord in writing within five (5) business days of receipt of such notice. Tenant will take all reasonable steps to remedy the cause of any such cancellation or shall find replacement insurance meeting the requirements of this Lease, such that no lapse in the required insurance shall occur. Tenant shall provide written notice to Landlord that the pending cancellation has been rescinded or shall provide a certificate of insurance evidencing the replacement insurance, by the date the pending cancellation was to become effective.

**(v)** with respect to damage to or loss of Tenant's Business Personal Property, a waiver of subrogation must be obtained, as required under § 14.4 below.

**14.2.2 Blanket Coverage**. All of the insurance requirements set forth herein on the part of Tenant to be observed shall be deemed satisfied if the Premises are covered by a blanket insurance policy complying with the limits, requirements, and criteria contained in this Article 14 insuring all or most of Tenant's facilities in California.

**14.2.3 Evidence of Coverage**. A duplicate original policy or a certificate of insurance shall be deposited with Landlord at the commencement of the Term or, if earlier, upon Tenant's taking possession of the Premises; and on renewal of the policy a certificate of insurance listing the insurance coverages required hereunder and naming the appropriate additional insureds shall be deposited with Landlord not less than seven (7) days before expiration of the policy.

**14.3 LANDLORD'S INSURANCE**. Landlord shall maintain "all risk" property damage insurance containing an agreed amount endorsement covering not less than one hundred percent (100%) of the full insurable replacement cost valuation of (y) the Building and the tenant improvements, betterments, and the alterations thereto; and (z) Landlord's personal property, business papers, furniture, fixtures, and equipment (collectively "Landlord's Property"), exclusive of the costs of excavation, foundations and footings, and risks required to be covered by Tenant's insurance, and subject to commercially reasonable deductibles. Landlord shall also obtain and keep in full force the following policies of insurance: (a) commercial general liability insurance; (b) loss of rent insurance (also known as rent continuation insurance); (c) workers' compensation insurance, if required by applicable Law; and (d) such other insurance as Landlord deems appropriate or as may be required by any Holder or Lessor.

**14.4 RELEASES AND WAIVERS OF SUBROGATION**. The purpose of this provision is to allow Landlord and Tenant to allocate and assume certain risks to coincide with insurance coverages required to be maintained pursuant to the terms to this Lease. Landlord and Tenant recognize the benefit that each will receive from the waivers of subrogation each is required to obtain pursuant to this § 14.4 and that there are significant advantages to each in connection with minimizing duplication of insurance coverages. Accordingly, Landlord and Tenant agree to accept and place the limitations which follow on each other's respective liabilities and responsibility for damages in order to coincide with required insurance coverages; provided, however, that the provisions of§§ 14.4.1 through 14.4.5 below shall be applicable only to the extent that the injured party in each case actually receives compensation from its insurer with respect to the damage caused by the other party, and otherwise the provisions of§ 14.5 below shall apply.

**14.4.1 Tenant's Property Agreement**. In light of Tenant's agreement to insure Tenant's Business Personal Property in accordance with § 14.1.3 above, Tenant agrees that Landlord will have no liability to Tenant in the event Landlord negligently damages or destroys all or any part of Tenant's Business Personal Property. Tenant will cause to be placed in its insurance policies covering Tenant's Business Personal Property a waiver of subrogation so that its insurance company will not become subrogated to Tenant's rights and will not be able to proceed against Landlord in connection with any such damage or destruction.

**14.4.2 Landlord's Property Agreement**. In light of Landlord's agreement to insure Landlord's Property in accordance with § 14.3 above, Landlord agrees that Tenant will have no liability to Landlord in the event that Tenant negligently damages or destroys all or any part of Landlord's Property. Landlord will cause to be placed in its insurance policies covering Landlord's Property a waiver of subrogation so that its insurance company will not become subrogated to Landlord's rights and will not be able to proceed against Tenant in connection with any such damage or destruction.

**14.4.3 Tenant's Release**. Landlord shall not be responsible or liable to Tenant for any damages or destruction to Tenant's Business Personal Property caused by Landlord's employees, agents, visitors, invitees, guests, or independent contractors (collectively "Landlord's Associates"), and Tenant hereby releases Landlord from any claims, liabilities, demands, losses, damages, consequential damages, and the like, including reasonable attorneys' fees and court costs (collectively "Claims") resulting from damage or destruction to Tenant's Business Personal Property caused directly or indirectly by Landlord and/ or Landlord's Associates; provided, however, that nothing herein shall be deemed to release Landlord's independent contractors from any such Claims Tenant may have against Landlord's independent contractors.

**14.4.4 Landlord's Release**. Tenant shall not be responsible or liable to Landlord for any damages or destruction to Landlord's Property caused by Tenant's employees, agents, visitors, invitees, guests, or independent contractors (collectively "Tenant's Associates"), and Landlord hereby releases Tenant from any Claims resulting from damage or destruction to Landlord's Property caused directly or indirectly by Tenant and/ or Tenant's Associates; provided, however, that nothing herein shall be deemed to release Tenant's independent contractors from any such Claims Landlord may have against Tenant's independent contractors.

**14.4.5 Damage to Business and Loss of Rents**. In light of Landlord's agreement to carry continuation of rent insurance pursuant to § 14.3 above and Tenant's agreement to carry business interruption insurance (extra expense insurance) in accordance with§ 14.1.5 above, in the event that Landlord's Property is damaged or destroyed because of any act or conduct, negligent or otherwise, by Tenant and/ or by Tenant's Associates, Landlord shall have no rights against Tenant by virtue of such damage or destruction, and Landlord hereby releases Tenant from all Claims, including claims for loss of rent or profits, by Landlord directly or indirectly resulting from the damage or destruction of Landlord's Property by conduct by Tenant and/or by Tenant's Associates. Likewise, in the event that Tenant's Business Personal Property is damaged or destroyed because of any act or conduct, negligent or otherwise, by Landlord and/ or by Landlord's Associates, Tenant shall have no rights against Landlord by virtue of such damage or destruction, and Tenant hereby releases Landlord from all Claims by Tenant directly or indirectly resulting from the damage or destruction to Tenant's Business Personal Property by the conduct of Landlord and/or Landlord's Associates, including Claims for loss of business or loss of profits. Notwithstanding the foregoing, nothing herein shall be deemed to release Tenant's or Landlord's independent contractors from any liability to Tenant and/or Landlord.

**14.4.6 Injury and Death to Individuals**. Landlord and Tenant understand that waivers of subrogation do not apply to injury to and death of individuals. Landlord and Tenant shall each carry insurance, as provided by this Article 14, in connection with injury and death to individuals. Landlord hereby agrees to indemnify and hold Tenant harmless from any Claims which Tenant may otherwise have with respect to injury or death to individuals occurring within the Property but outside the Premises, except

to the extent that such injury or death is caused by Tenant and/or Tenant's Associates, through negligence or otherwise, and is not covered by the insurance Landlord is required to carry under this Lease. Likewise, Tenant agrees to indemnify, defend, protect, and hold Landlord harmless from any Claims for injury or death to persons occurring within the Premises or caused, directly or indirectly, by Tenant or Tenant's Associates outside the Premises, except to the extent such injuries or death are caused by Landlord and/ or Landlord's Associates, through negligence or otherwise, and are not covered by the insurance Tenant is required to carry under this Lease.

**14.4.7 Abatement of Rent**. Except as may be expressly provided elsewhere in this Lease, Tenant shall not be entitled to Rent abatement and shall not otherwise have, and hereby releases Landlord from, any Claims resulting from Tenant's inability to utilize all or any part of the Premises, except to the extent that Tenant is unable to use all or any part of the Premises and does not use all or any part of the Premises as a result of Landlord's intentional decision to refuse to provide access to the Building and/or the Premises and/or to provide services and/ or utilities to Tenant as required to be provided by Landlord to Tenant pursuant to this Lease, where such refusal is not caused by a Force Majeure occurrence.

**14.4.8 Availability of Waiver of Subrogation**. If an insurance policy cannot be obtained with a waiver of subrogation or is obtainable only by the payment of an additional premium charge above that charged by insurance companies issuing policies without waiver of subrogation, the party undertaking to obtain the insurance shall notify the other party of this fact. The other party shall have a period of ten (10) days after receiving the notice either to place the insurance with a company that is reasonably satisfactory to the other party and that will carry the insurance with a waiver of subrogation at no additional cost or to agree to pay the additional premium if such a policy is obtainable at additional cost. If the insurance cannot be obtained or the party in whose favor a waiver of subrogation is desired refuses to pay the additional premium charged, the other party is relieved of the obligation to obtain a waiver of subrogation with respect to the particular insurance involved.

**14.5** OTHER CASES OF DAMAGE OR INJURY. In all cases not covered by the foregoing provisions of this Article 14, Tenant hereby assumes all risk of damage to property or injury to persons in, upon, or about the Premises from any cause other than the active negligence or intentional misconduct of Landlord and its agent or employees. Without limiting the generality of the foregoing, Landlord shall not be liable for injury or damage which may be sustained by the person, goods, wares, merchandise, or property of Tenant or Tenant's Associates or any other person in or about the Premises caused by or resulting from fire, steam, electricity, gas, water or rain, which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction, or other defects of the Systems and Equipment, pipes, sprinklers, wires, INC, appliances, plumbing, heating, air-conditioning, or lighting fixtures of the same, whether the damage or injury results from conditions arising upon the Premises or upon other portions of the Property, the Complex, or from other sources. Landlord shall not be liable for any damages arising from any act or omission of any other tenant or occupant of the Property or Complex. In all cases not covered by the foregoing provisions of this Article 14, Tenant shall indemnify, defend, protect, and hold Landlord harmless against (a) any and all Claims arising from any death or injury to any person or damage to any property whatsoever occurring in, on, or about the Premises or any part thereof, and (b) any and all Claims occurring in, on or about any of the Common Areas, the Property, or the Complex, when such injury or damage is caused in whole or in part by the act, negligence, fault, or omission of any duty with respect to the same by Tenant or Tenant's Associates. In all cases not covered by the foregoing provisions of this Article 14, Tenant shall further indemnify, defend, protect, and hold Landlord harmless from and against any and all Claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under this Lease, or arising from any act or negligence of Tenant or Tenant's Associates, and from and against all costs, attorneys' fees, expenses, and liabilities incurred in connection with any such Claim or any action or proceeding brought thereon. In case any action or proceeding be brought against Landlord by reason of any such Claim, Tenant, upon notice from Landlord, shall defend the same at

Tenant's expense by counsel reasonably satisfactory to Landlord; provided, however, that Tenant shall not be liable in any case for damage to property or death or injury to person(s) occasioned by the active negligence or intentional misconduct of Landlord or Landlord's Associates, unless covered by insurance Tenant is required to provide.

## 15 DAMAGE OR DESTRUCTION

**15.1 LOSS COVERED BY INSURANCE**. If at any time prior to the expiration or termination of this Lease the Premises or the Property is wholly or partially damaged or destroyed by any casualty which results in a loss to Landlord that is fully covered by insurance maintained by Landlord or for Landlord's benefit (or required to be maintained by Landlord pursuant to§ 14.3 above), which casualty renders the Premises totally or partially inaccessible or unusable by Tenant in the ordinary conduct of Tenant's business, the parties agree that the following provisions shall modify their obligations under this Lease after such damage or destruction.

**15.1.1 Repairs Which Can Be Completed Within Six (6) Months**. Within thirty (30) days after Tenant's written notice to Landlord of such damage or destruction, Landlord shall provide Tenant with notice of its determination of whether the damage or destruction can be repaired within six (6) months after the commencement of the work of repairing such damage or destruction without the payment of overtime or other premiums. If all repairs to Premises or Property can, in Landlord's judgement, be completed within six (6) months following the date of the commencement of the work of repairing such damage or destruction without the payment of overtime or other premiums, Landlord shall, at Landlord's expense, repair the same; and this Lease shall remain in full force and effect, except that a proportionate reduction of the Base Rent shall be allowed Tenant to the extent that the Premises shall be rendered inaccessible or unusable by Tenant and are not used by Tenant during the period of time that such portion is unusable or inaccessible and not used by Tenant.

**15.1.2 Repairs Which Cannot Be Completed Within Six (6) Months**. If all such repairs to the Property and Premises cannot, in Landlord's judgement, be completed within six (6) months following the commencement of the work of repairing such damage or destruction without the payment of overtime or other premiums, Landlord shall notify Tenant of such determination; and in such an event, either Landlord or Tenant may, at its option, upon written notice to the other party given within sixty (60) days after the occurrence of such damage or destruction, elect to terminate this Lease as of the date of the occurrence of such damage or destruction. In the event that neither Landlord nor Tenant elects to terminate the Lease in accordance with the foregoing provisions, then Landlord shall, at Landlord's expense, repair such damage or destruction; and in such event, this Lease shall continue in full force and effect, except that the Base Rent shall be proportionately reduced as provided in§ 15.1.1 above; provided, however, that if any such repair is not commenced by Landlord within ninety (90) days after the occurrence of such damage or destruction or is not substantially completed by Landlord within nine (9) months after the occurrence of such damage or destruction, then in either such event Tenant may, at its option, upon written notice to Landlord, elect to terminate this Lease as of the date of Landlord's receipt of such notice. Notwithstanding the foregoing, Tenant shall have no right to terminate this Lease in the situation just described if all of the following conditions are met: (x) Landlord shall have informed Tenant in its notice of determination that the repair of such damage or destruction could not be substantially completed by Landlord within nine (9) months after the occurrence of such damage or destruction; (y) Tenant shall not have elected to terminate the Lease by written notice delivered to Landlord within sixty (60) days after the occurrence of such damage or destruction; and (z) Landlord shall have commenced the work of repairing such damage or destruction.

**15.2 LOSS NOT COVERED BY INSURANCE**. If at any time prior to the expiration or earlier termination of this Lease the Premises or the Property is totally or partially damaged or destroyed in connection with a casualty, which loss to Landlord is not fully covered by insurance maintained by Landlord or for Landlord's benefit (or required to be maintained by Landlord pursuant to § 14.3 above); and if such damage renders the Premises inaccessible or unusable to Tenant for their intended purpose in the ordinary course of its business, Landlord may, at its option, upon written notice given to Tenant within sixty (60) days after Tenant's written notice to Landlord of the occurrence of such damage or destruction, either (a) elect to repair or to restore such damage or destruction or (b) elect to terminate this Lease. If Landlord elects to repair or restore such damage or destruction, this Lease shall continue in full force and effect, except that the Base Rent shall be proportionately reduced as provided in § 15.1.1 above. If Landlord does not elect by notice to Tenant to repair such damage, the Lease shall terminate as of the date of Tenant's receipt of Landlord's notice of election to terminate. Notwithstanding the foregoing, if all repairs to the Premises or the Building cannot, in Landlord's reasonable judgement, be completed within six (6) months following the date of the commencement of the work of repairing such damage or destruction without the payment of overtime or other premiums, then either Landlord or Tenant may at the option of either, upon written notice to the other party given within sixty (60) days after the occurrence of such damage or destruction, elect to terminate this Lease as of the date of such notice.

**15.3 DESTRUCTION DURING FINAL YEAR**. Notwithstanding anything to the contrary contained in§§ 15.1 and15.2, if the Premises or the Building are wholly or partially damaged or destroyed within the final twelve (12) months of the Term of this Lease or, if an applicable renewal option has been exercised, during the last year of any renewal term, in such a way that Tenant shall be prevented from using the Premises for at least thirty (30) consecutive days as a result of such damage or destruction, then either Landlord or Tenant may, at the option of either, by written notice to the other party delivered within sixty (60) days after the occurrence of such damage or destruction, elect to terminate the Lease as of the date of such notice.

**15.4 DESTRUCTION OF TENANTS PROPERTY**. Under no circumstances shall Landlord be required to repair any injury or damage to, or make any repairs to or replacements of, Tenant's Property. However, as part of Operating Expenses, Landlord shall cause to be insured the Improvements in the Premises which do not consist of Tenant's Property and shall cause such Improvements to be repaired and restored at Landlord's sole expense, except that Tenant shall pay any applicable deductible. Landlord shall have no responsibility for any contents placed or kept in or on the Premises or the Property by Tenant or Tenant's employees or invitees or any other person claiming through Tenant.

**15.5 EXCLUSIVE REMEDY**. Landlord and Tenant agree that their respective rights and obligations in the event of any damage or destruction of the Premises, Property, or Complex shall be governed exclusively by this Lease. Tenant, as a material inducement to Landlord entering into this Lease, irrevocably waives and releases Tenant's rights under California Civil Code§§ 1932(2), 1933(4), and 1942, as the same may be modified or replaced hereafter. No damages, compensation, setoff, allowance, or claim shall be payable by Landlord for any inconvenience, interruption, or cessation of Tenant's business or any annoyance arising from any damage to or destruction of all or any portion of the Premises, Property, or Complex.

## 16 EMINENT DOMAIN

**16.1 CONDEMNATION**. If the whole or any material part of the Premises or Property shall be taken by power of eminent domain or condemned by any competent authority for any public or quasi-public use or purpose; or if any adjacent property or street shall be so taken, condemned, reconfigured, or vacated by such authority in such manner as to require the use, reconstruction, or remodeling of any part of the Premises or Property; or if Landlord shall grant a deed or other instrument in lieu of such taking by eminent domain or condemnation (collectively "Takings"), Landlord shall have the option to terminate this Lease upon ninety (90) days' notice, provided such notice is given no later than one hundred and eighty (180) days after the date of such Taking. Tenant shall have reciprocal termination rights, on the same terms and conditions and to be exercised in the same manner as the foregoing sentence provides, if the whole or any material part of the Premises is permanently taken, or if access to the Premises is permanently materially impaired.

**16.2 RENTAL APPORTIONMENT**. All Rent shall be apportioned as of the date of such termination or the date of such Taking, whichever shall first occur. If any part of the Premises shall be taken, and this Lease shall not be so terminated, the Rent shall be proportionately abated.

**16.3 AWARDS AND DAMAGES**. Landlord shall be entitled to receive the entire award or payment in connection with any Taking, except that Tenant shall have the right to file any separate claim available to Tenant for any taking of Tenant's personal property and fixtures belonging to Tenant and removable by Tenant upon expiration of the Term, and for moving expenses, so long as such claim does not diminish the award available to Landlord and such claim is payable separately to Tenant.

**16.4 TEMPORARY CONDEMNATION**. If part or all of the Premises are condemned for a limited period of time ("Temporary Condemnation"), this Lease shall remain in effect. The Rent and Tenant's obligations for the part of the Premises taken shall abate during the Temporary Condemnation in proportion to the part of the Premises that Tenant is unable to use in its business operations as a result of the Temporary Condemnation. Landlord shall receive the entire award for any Temporary Condemnation.

## 17 ASSIGNMENT AND SUBLETTING

**17.1 CONSENT REQUIRED FOR TRANSFER**. Tenant agrees that it shall not assign, sublet, mortgage, hypothecate, or encumber this Lease, nor permit or allow the Premises or any part thereof to be used or occupied by others, without the prior written consent of Landlord in each instance. The actions described in the foregoing sentence are referred to collectively herein as "Transfers" and individually as a "Transfer." If the Premises or any part thereof be sublet or occupied by anybody other than Tenant, Landlord may, after default by Tenant, collect rent from the subtenant or occupant and apply the net amount collected to the Rent herein reserved; but no Transfer, occupancy, or collection shall be deemed a waiver of the provisions hereof, the acceptance of the subtenant or occupant as tenant, or a release of Tenant from the further performance hereunder by Tenant. The consent by Landlord to a Transfer shall not relieve Tenant from obtaining the Landlord's express written consent to any further Transfer. In no event shall any permitted sublessee assign or encumber its sublease or further sublet all or any portion of its sublet space, or otherwise suffer or permit the sublet space or any part thereof to be used or occupied by others, without Landlord's prior written consent in each instance.

**17.1.1 Corporate Transferor**. If Tenant is a corporation, the provisions of§ 17.1 shall apply to a transfer (by one or more transfers) of a majority of the stock of Tenant as if such transfer of a majority of the stock of Tenant were an assignment of this Lease.

**17.2 NOTICE OF INTENT TO TRANSFER**. If Tenant shall at any time or times during the Term of this Lease desire to assign this Lease or sublet all or part of the Premises, Tenant shall give notice thereof (the "Transfer Notice") to Landlord, which notice shall set forth all of the following:

**(a)** the proposed terms of the assignment or subletting, including (i) the effective or commencement date thereof, which shall be not less than thirty (30) nor more than one hundred eighty (180) days after the giving of such notice; (ii) in the case of a proposed assignment, the consideration therefor; and (iii) in the case of a proposed subletting, the rental rate to be paid by the proposed subtenant (including any escalation or Additional Rent payable), the term of the proposed sublease (including any renewal options), any work to be performed or paid for by Tenant, the amount of any security deposit, the cost and extent of any so-called "take-over" obligations to be assumed by Tenant on behalf of such subtenant, the amount of any rent concessions to be granted by Tenant, and any other additional monetary or so-called "business" terms or conditions;

**(b)** 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; and

**(c)** current financial information with respect to the proposed assignee or subtenant, including its most recent financial report, and any other information which may reasonably be required by Landlord.

**17.3 LANDLORD'S RECAPTURE RIGHT**. The Transfer Notice shall be deemed an offer from Tenant to Landlord whereby Landlord (or Landlord's designee) may, at its option, terminate this Lease as to all or the affected portion of the Premises (as the case may be) as of the effective date of the proposed Transfer. Landlord may exercise its recapture right by notice to Tenant at any time within thirty (30) days after Landlord's receipt of Tenant's Transfer Notice; and during such thirty-day period Tenant shall not assign this Lease nor sublet such space to any person.

**17.3.1 Date of Termination**. If Landlord exercises its option to terminate this Lease as provided in§ 17.3 above, this Lease shall end and expire on the date that such Transfer was to be effective or commence, as the case may be, and the Base Rent and Additional Rent shall be paid and apportioned to such date.

**17.4 CONDITIONS OF CONSENT**. If Landlord does not exercise its recapture right pursuant to § 17.3 above, and providing that Tenant is not in default of any of Tenant's obligations under this Lease after notice and the expiration of any applicable grace period, Landlord's consent (which must be in writing and in form reasonably satisfactory to Landlord) to the proposed assignment or sublease shall not be unreasonably withheld or delayed, provided the following conditions are met:

**(a)** Tenant shall have complied with the provisions of§ 17.2 above, and Landlord shall not have exercised its recapture right pursuant to § 17.3 above within the time permitted therefor;

**(b)** In Landlord's reasonable judgement the proposed assignee or subtenant is engaged in a business which would use the Premises, or the relevant part thereof, in a manner which is in keeping with the then-current standards of the Building, is limited to the use expressly permitted under this Lease, and will not violate any negative covenant or other restriction or agreement as to use contained in any other lease of space in the Complex;

**(c)** The proposed assignee or subtenant is a reputable entity or person of good character and with reasonably sufficient financial worth considering the responsibility involved, is not subject to any toxic or hazardous materials cleanup order with respect to any other property, and Landlord has been furnished with reasonable proof thereof;

**(d)** Neither the proposed assignee or sublessee nor any person which, directly or indirectly, controls, is controlled by, or is under common control with, the proposed assignee or sublessee or any person who controls the proposed assignee or sublessee, is then an occupant of any part of the Complex, provided Landlord then has suitable space in the Complex available for leasing. For purposes of this Lease control shall be deemed to mean ownership of more than fifty percent (50%) of all the voting stock of a corporation or more than fifty percent (50%) of all the legal and equitable interest in any other business entity;

**(e)** The proposed assignee or sublessee is not a person or entity with whom Landlord is then negotiating to lease space in the Building;

**(f)** The form of the proposed lease shall be in form reasonably satisfactory to Landlord and shall comply with the applicable provisions of this Article 17;

**(g)** There shall not be more than two (2) subtenants (not including the Permitted Occupant (as defined in§ 17.14 below) of the Premises);

**(h)** The rental and other terms and conditions of the sublease are the same as those contained in the proposed sublease furnished to Landlord in the Transfer Notice pursuant to § 17.2 above;

**(i)** Tenant shall reimburse Landlord on demand for any reasonable costs that may be incurred or paid by Landlord to third persons in connection with said assignment or sublease, including 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; and

**(j)** Tenant shall not have advertised or publicized in any way the availability of the Premises without prior notice to and approval by Landlord, nor shall any advertisement state the name (as distinguished from the address) of the Complex or the rental rate;

**(k)** The sublease shall not allow the use of the Premises or any part thereof for (i) the sale of food for on or off-premises consumption or (ii) use by a foreign or domestic governmental agency.

Whether or not Landlord shall grant consent, Tenant shall pay $500.00 towards Landlord’s review and processing expenses in connection with any Transfer request, as well as any reasonable legal fees incurred by Landlord, within thirty (30) days after written request by Landlord

**17.5 CONTINUATION OF LEASE TERMS**. Each subletting pursuant to this Article 17 shall be subject to all of the covenants, agreements, terms, provisions, and conditions contained in this Lease. Notwithstanding any such subletting to any other subtenant and/or acceptance of Rent by Landlord from any subtenant, Tenant shall remain liable for the payment of the Base Rent and Additional Rent due and to become due hereunder and for the performance of all the covenants, agreements, terms, provisions, and conditions contained in this Lease on the part of Tenant to be performed and all acts and omissions of any licensee or subtenant or anyone claiming under or through any subtenant which shall be in violation of any of the obligations of this Lease; and any such violation shall be deemed to be a violation by Tenant. Tenant further agrees that notwithstanding any such subletting, no other and further subletting of the Premises by Tenant or any person or entity claiming through or under Tenant shall or will be made except upon compliance with and subject to the provisions of this Article 17. If Landlord shall decline to give its consent to any proposed assignment or sublease, or if Landlord shall exercise its recapture right under § 17.3 above, Tenant shall indemnify, defend, protect, and hold Landlord harmless against and from any and all Claims resulting from any Claims that may be made against Landlord by the proposed assignee or sublessee or by any brokers or other persons claiming a commission or similar compensation in connection with the proposed assignment or sublease.

**17.6 LAPSE OF CONSENT**. In the event that Landlord consents to a proposed Transfer described in the Transfer Notice and Tenant fails to execute and deliver the assignment or sublease described in the Transfer Notice to which Landlord consented within one hundred twenty (120) days after the giving of such consent, then Tenant shall again comply with all of the provisions and conditions of § 17.2 above before assigning this Lease or subletting all or part of the Premises.

**17.7 TRANSFER DOCUMENTATION**. With respect to each and every Transfer authorized by Landlord under the provisions of this Lease, it is further agreed as follows:

**(a)** no subletting shall be for a term ending later than one day prior to the Expiration Date of this Lease;

**(b)** no sublease shall be valid, and no subtenant shall take possession of the Premises or any part thereof, until an executed counterpart of such sublease has been delivered to Landlord;

**(c)** each sublease shall provide that it is subject and subordinate to this Lease and to the matters to which this Lease is or shall be subordinate, and that in the event of termination (whether by voluntary surrender or otherwise), re-entry, 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 (i) liable for any previous act or omission of Tenant under such sublease; (ii) subject to any offset, credit, or allowance not expressly provided in such sublease which theretofore accrued to such subtenant against Tenant or (iii) bound by any previous modification of such sublease or by any previous prepayment of more than one month's rentals; and

**(d)** each assignment or sublease document must provide that the assignee or subtenant expressly assumes all obligations of the Tenant under the Lease as joint and several obligations without any release of Tenant.

**17.8 TRANSFER PREMIUM**. If Landlord shall give its consent to any assignment of this Lease or to any sublease, Tenant shall in consideration therefor pay to Landlord, as Additional Rent, the following amounts (collectively the "Transfer Premium"):

**(a)** in the case of an assignment, an amount equal to fifty percent (50%) of all sums and other considerations paid to Tenant by the assignee for or by reason of such assignment, including sums paid for the sale of Tenant's Property, but excluding the following: (i) in the case of a sale of Tenant's Property, the then-current net unamortized or undepreciated cost thereof determined on the basis of Tenant's federal income tax returns; (ii) then-customary brokerage commissions being paid by Landlord for leasing of space in the Building or, if less, the brokerage commission paid by Tenant in connection with the assignment; (iii) reasonable legal fees and disbursements; and (iv) reasonable amounts paid by Tenant for tenant improvements constructed for the assignee; and

**(b)** in the case of a sublease, fifty percent (50%) of any rents, additional charge, or other consideration payable under the sublease to Tenant by the subtenant which is in excess of the Base Rent and Additional Rent accruing during the term of the sublease in respect of the subleased space (at the rate per square foot payable by Tenant hereunder) pursuant to the terms hereof, including sums paid for the sale or rental of Tenant's Property, but excluding the following: (i) in the case of the sale or lease of Tenant's Property, the then-current net unamortized or undepreciated cost thereof determined on the basis of Tenant's federal income tax returns; (ii) then-customary brokerage commissions being paid by Landlord for leasing of space in the Building or, if less, the brokerage commission paid by Tenant in connection with the sublease; (iii) reasonable legal fees and disbursements; and (iv) reasonable amounts paid by Tenant for tenant improvements constructed for the subtenant.

The sums payable as the Transfer Premium under this § 17.8 shall be paid to Landlord as and when payable by the subtenant or assignee to Tenant.

**17.9 ASSUMPTION BY TRANSFEREE** Any Transfer, whether made with Landlord's consent pursuant to § 17.1 or without Landlord's consent pursuant to§ 17.1.1, shall be made only if, and shall not be effective until, the assignee or subtenant shall execute, acknowledge, and deliver to Landlord an agreement in form and substance satisfactory to Landlord under which the assignee or transferee shall assume the obligations of this Lease on the part of Tenant to be performed or observed, from and after the date of Transfer, and whereby the assignee or transferee shall agree that the provisions in § 17.1 shall, notwithstanding such Transfer, continue to be binding upon it in respect of all future Transfers. The original named Tenant covenants that, notwithstanding any Transfer, whether or not in violation of the provisions of this Lease, and notwithstanding the acceptance of Base Rent and/or Additional Rent by Landlord from an assignee, transferee, or any other party, the original named Tenant shall remain fully liable for the payment of the Base Rent and Additional Rent and for the other obligations of this Lease on the part of Tenant to be performed or observed.

**17.10 NO WAIVER OR DISCHARGE**. The joint and several liability of Tenant and any immediate or remote successor in interest of Tenant and the due performance of the obligations of this Lease on Tenant's part to be performed or observed shall not be discharged, released, or impaired in any respect by any agreement or stipulation made by Landlord extending the time of, or modifying any of the obligations of, this Lease, or by any waiver or failure of Landlord to enforce any of the obligations of this Lease.

**17.11 LISTING OF NAME**. The listing of any name other than that of Tenant, whether on the doors of the Premises or the Building directory, or otherwise, shall not operate to vest any right or interest in this Lease or in the Premises, nor shall it be deemed to be the consent of Landlord to any Transfer of this Lease or to any sublease of the Premises or to the use or occupancy of the Premises by others.

**17.12 NET PROFITS AGREEMENT**. Anything contained in the foregoing provisions of this Article 17 to the contrary notwithstanding, neither Tenant nor any other person or entity having an interest in the possession, use, occupancy, or utilization of the Premises shall enter into any lease, sublease, license, concession, or other agreement for use, occupancy, or utilization of space in the Premises which provides for rental or other payment for such use, occupancy, or utilization based, in whole or in part, on the net income or profits derived by any person from the premises leased, used, occupied, or utilized (other than an amount based on a fixed percentage or percentages of receipts or sales); and any such purported lease, sublease, license, concession, or other agreement shall be absolutely void and ineffective as a conveyance of any right or interest in the possession, use, occupancy, or utilization of any part of the Premises.

**17.13 AFFILIATES**. Notwithstanding anything to the contrary in this Article 17, Landlord's consent shall not be required in the event Tenant desires to assign this Lease or sublet the Premises or any portion thereof to any corporation or entity which (a) controls, is controlled by, or is under common control with Tenant, (b) acquires all of the assets or equity interest of Tenant, or (c) is the resulting entity in a merger or consolidation of Tenant, subject to the following conditions:

**(a)** Tenant shall not be in default of any of the terms, covenants, or conditions on Tenant's part to observe or perform hereunder;

**(b)** such sublet or assignment shall be subject to all of the terms, covenants, and conditions of this Lease;

**(c)** Tenant shall notify Landlord of such sublet or assignment in accordance with§ 17.2 hereof and furnish Landlord with reasonably satisfactory evidence that such sublessee or assignee controls, is controlled by, or is under common control with Tenant; and

**(d)** in the event of such merger, consolidation, or transfer of substantially all of Tenant's assets, the successor to Tenant has a net worth, computed in accordance with generally-accepted accounting principles, at least equal to the greater of (i) the net worth of Tenant immediately prior to such merger, consolidation, or transfer or (ii) the net worth of Tenant herein named on the date of this Lease; and proof satisfactory to Landlord of such net worth shall have been delivered to Landlord at least ten (10) days prior to the effective date of any such transaction.

As used herein, the terms *control* and *common control* shall be deemed to mean the ownership of fifty percent (50%) or more of all of the issued and outstanding voting shares of such corporation, or fifty percent (50%) or more of all the legal and equitable interest in any such business entities.

**17.14 PERMITIED OCCUPANTS**. Landlord hereby agrees that the provisions of this Article 17 shall not apply to the shared occupancy of individual offices in the Premises with Tenant by individuals renting not more than one (1) such office (the "Permitted Occupant"), provided that the space occupied by the Permitted Occupant shall not be separately demised or contain separate entrances, demarcations, or reception areas and the occupancy by the Permitted Occupant shall be upon and subject to all of the terms and conditions of this Lease.

## 18 SUBORDINATION AND ATTORNMENT

**18.1 SUBORDINATION OF LEASE**. This Lease and all rights of Tenant hereunder are and shall be subject and subordinate in all respects to (a) all ground leases, overriding leases, and underlying leases of the Building, Property, and/ or the Complex now or hereafter existing; (b) all mortgages which may now or hereafter affect the Building, Property, or Complex and any of such leases, whether or not such mortgages shall also cover other lands and/ or buildings; (c) each and every advance made or hereafter to be made under such mortgages; and (d) to all renewals, modifications, replacements, and extensions of such leases and such mortgages and spreaders and consolidations of such mortgages. This§ 18.1 shall be self-operative, and no further instrument of subordination shall be required. In confirmation of such subordination, Tenant shall promptly execute and deliver any instrument that Landlord, the lessor of any such lease or the holder ("Holder") of any such mortgage or any of their respective successors in interest may reasonably request to evidence such subordination. The leases to which this Lease is, at the time referred to, subject and subordinate pursuant to this Article 18 are hereinafter sometimes referred to as "Superior Leases"; the mortgages to which this Lease is, at the time referred to, subject and subordinate are hereinafter sometimes referred to as "Superior Mortgages"; and the lessor of a superior lease or its successor in interest at the time referred to is sometimes hereinafter referred to as a "Lessor." Notwithstanding the foregoing, Tenant agrees, upon written request from Landlord or any Holder or Lessor, to reorder the relative priority of the Lease with respect to any particular Superior Mortgage or Superior Lease so as to subordinate the lien of any such Superior Mortgage or Superior Lease to the Lease. Tenant agrees to execute any instrument which Landlord or any Holder or Lessor may present in order to effect such prioritization of the Lease, provided that such instrument does not modify any material term of the Lease or increase Tenant's obligations thereunder.

**18.2 NOTICE AND CURE RIGHT**. In the event of any action or omission of Landlord which would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant shall not exercise such right unless and until (i) Tenant shall have given written notice of such act or omission to the Holder of each Superior Mortgage and the Lessor of each Superior Lease whose name and address shall previously have been furnished to Tenant in writing; and (ii) unless such act or omission shall be one which is not capable of being remedied by Landlord or

such mortgage Holder or Lessor within a reasonable period of time, a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice and following the time when such Holder or Lessor shall have become entitled under such Superior Mortgage or Superior Lease, as the case may be, to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under this Lease or otherwise, after similar notice, to effect such remedy), provided such Holder or Lessor shall with due diligence give Tenant written notice of intention to remedy such act or omission and shall thereafter diligently and continuously prosecute such cure to completion.

**18.3 ATTORNMENT**. If the Lessor of a Superior Lease or the Holder of a Superior Mortgage shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or delivery of a new lease or deed, then at the request of such party so succeeding to Landlord's rights or other person having or acquiring title by virtue of such foreclosure or termination (herein sometimes referred to as "Successor Landlord") and upon such Successor Landlord's written agreement to accept Tenant's attornment, Tenant shall attorn to and recognize such Successor Landlord as Tenant's landlord under this Lease and shall promptly execute and deliver any instrument that such Successor Landlord may reasonably request to evidence such attornment. Upon such attornment this Lease shall continue in full force and effect as a direct lease between the Successor Landlord and Tenant upon all of the terms, conditions, and covenants in this Lease, except as follows:

**(a)** the Successor Landlord shall not be liable for any previous act or omission of Landlord under this Lease;

**(b)** the Successor Landlord shall not be subject to any offset (unless expressly provided for in this Lease) which shall have theretofore accrued to Tenant against Landlord;

**(c)** the Successor Landlord shall not be bound by any previous modification of this Lease, unless expressly provided for in this Lease, or by any previous prepayment of more than one month's Base Rent, unless such modification or prepayment shall have been expressly approved in writing by the Lessor of the Superior Lease or the Holder of the Superior Mortgage through or by reason of which the Successor Landlord shall have succeeded to the rights of Landlord under this Lease.

## 19 FINANCING REQUIREMENTS

**19.1 LENDER-REQUESTED MODIFICATIONS**. If, in connection with obtaining financing or refinancing for the Property or Complex a prospective lender shall request reasonable modifications to this Lease as a condition to such financing or refinancing, Tenant shall not withhold, delay, or unreasonably condition its consent thereto. It is agreed that, among the modifications which shall be deemed reasonable, are modifications to the subordination and attornment provisions of this Lease, modifications to the notice provisions of this Lease, modifications to the provisions of this Lease which permit the lender to cure any defaults by Landlord, and modifications to the provisions which grant additional time to cure as may be reasonably required by the lender.

**19.2 FAILURE TO COMPLY**. If Tenant fails or refuses to execute and deliver to Landlord, within fifteen (15) days after written notice to do so, the amendment(s) to this Lease accomplishing such reasonable modification(s), Landlord, at its sole option, shall have the right either (a) to terminate this Lease or (b) to execute the amendment for and on behalf of Tenant as its attorney-in-fact. Tenant hereby irrevocably appoints Landlord as its attorney-in-fact solely to execute any documents required to carry out the intent of§ 19.1 above on behalf of Tenant.

## 20 DEFAULT

**20.1 TENANT'S DEFAULT**. Tenant's failure to perform any of its obligations under this Lease when due and in the manner required shall constitute a material breach and default ("Event of Default") of this Lease by Tenant, subject to any cure period(s) permitted or available under this Lease or applicable laws or statutes. In addition, the following shall also be deemed Events of Default hereunder:

**(a)** Tenant's failure to take possession of the Premises for a period of sixty (60) days or longer after the Commencement Date;

**(b)** Tenant fails to perform any covenant, condition, or agreement contained in this Lease not otherwise specified in this § 20.1, where such failure continues for thirty (30) days after written notice from Landlord to Tenant, or such additional period as is reasonably necessary to effect cure, provided Tenant commences cure within such thirty-(30)-day period and diligently pursues the same to completion within ninety (90) days following Landlord's notice;

**(c)** Tenant's abandonment or vacation of the Premises;

**(d)** any material misrepresentation or omission herein or in any financial statements or other materials provided by Tenant or any Guarantor in connection with negotiating or entering this Lease or in connection with any Transfer under Article 17;

**(e)** cancellation of any guaranty of this Lease by any Guarantor;

**(f)** failure by Tenant to cure within any applicable times permitted thereunder any default under any other lease for space in the Complex or any other buildings owned or managed by Landlord or its affiliates now or hereafter entered by Tenant; and any Default hereunder not cured within the times permitted for cure herein shall, at Landlord's election, constitute a default under any other such lease or leases;

**(g)** The levy of a writ of attachment or execution on this Lease or on any of Tenant's property;

**(h)** Tenant's or any Guarantor's general assignment for the benefit of creditors or arrangement, composition, extension, or adjustment with its creditors;

**(i)** Tenant's or any Guarantor's filing of a voluntary petition for relief, or the filing of a petition against Tenant or any Guarantor in a proceeding under the Federal Bankruptcy laws or other insolvency laws which is not withdrawn or dismissed within forty-five (45) days thereafter; or, under the provisions of any law providing for reorganization or winding up of corporations, the assumption by any court of competent jurisdiction of jurisdiction, custody, or control of Tenant or any substantial part of its property, or of any Guarantor, where such jurisdiction, custody, or control remains in force unrelinquished, unstayed, or unterminated for a period of forty five (45) days;

**(j)** In any proceeding or action in which Tenant is a party, the appointment of a trustee, receiver, agent, or custodian to take charge of the Premises or Tenant's Property for the purpose of enforcing a lien against the Premises or Tenant's Property; or

**(k)** If Tenant or any Guarantor is a partnership or consists of more than one (1) person or entity, the involvement of any partner of the partnership or other person or entity in any of the acts or events described in subsections (i) through (l) above.

**20.2 LANDLORD'S REMEDIES**. Upon the occurrence of an Event of Default hereunder, Landlord shall have the right, in addition to any other rights or remedies Landlord may have under Laws, at Landlord's option, without further notice or demand of any kind, to elect to do one of the following alternatives:

**(i)** Terminate this Lease and Tenant's right to possession of the Premises, re-enter the Premises, and take possession thereof; and Tenant shall have no further claim to the Premises or under this Lease; or

**(ii)** Continue this Lease in effect and collect any unpaid Rent or other charges which have theretofore accrued or which thereafter become due and payable. It is intended hereunder that Landlord have the remedy described in California Civil Code§ 1951.4, which provides that a landlord may continue a lease in effect after a tenant's breach and abandonment and recover rent as it becomes due, if tenant has the right to sublease or assign, subject only to reasonable limitations.

In the event of any re-entry or retaking of possession by Landlord, Landlord shall have the right, but not the obligation, to remove all or any part of Tenant's Property from the Premises and to place such property in storage at a public warehouse at the expense and risk of Tenant.

**20.2.1 No Waiver of Default**. The waiver by Landlord of any Event of Default or of any other breach of any term, covenant, or condition of this Lease shall not be deemed a waiver of such term, covenant, or condition or of any subsequent breach of the same or any other term, covenant, or condition. Acceptance of Rent by Landlord subsequent to any Event of Default or breach hereof shall not be deemed a waiver of any preceding Event of Default or breach other than the failure to pay the particular Rent so accepted, regardless of Landlord's knowledge of any breach at the time of such acceptance of Rent. Landlord shall not be deemed to have waived any term, covenant, or condition of this Lease, unless Landlord gives Tenant written notice of such waiver. Tenant should not rely upon Landlord's failure or delay in enforcing any right or remedy hereunder.

**20.2.2 Landlord's Right to Cure**. If Tenant defaults in the performance of any of its obligations under this Lease, Landlord may (but shall not be obligated to), without waiving such default, perform the same for the account and at the expense of Tenant. Tenant shall pay Landlord all costs of such performance promptly upon receipt of a bill therefor.

**20.3 DAMAGES**. Should Landlord elect to terminate this Lease under the provisions of§ 20.2 (i) above, Landlord may recover as damages from Tenant the following:

**(a) Past Rent**: The worth at the time of the award of any unpaid Rent which had been earned at the time of termination; plus

**(b) Rent Prior to Award**: The worth at the time of the award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

**(c) Rent After Award**: The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the rental loss that Tenant proves could have been reasonably avoided; plus

**(d) Proximately Caused Damages**: Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses (including attorneys' fees), incurred by Landlord in (i) retaking possession of the Premises; (ii) maintaining the Premises after Tenant's default; (iii) preparing the Premises for reletting to a new tenant, including any repairs or alterations; and (iv) reletting the Premises, including brokers' commissions.

"The worth at the time of the award" as used in subsections (a) and (b) above is to be computed by allowing interest at the rate of ten percent (10%) per annum or, if different, the legal rate then applicable in California. "The worth at the time of the award" as used in subsection (c) above is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank situated nearest to the Premises at the time of the award plus one percent (1%).

**20.4 LANDLORD'S DEFAULT**. If Landlord fails to perform any covenant, condition, or agreement contained in this Lease within thirty (30) days after receipt of written notice from Tenant specifying a default and the relevant Lease provision, or if Landlord fails within that thirty-day period after notice to commence to cure any such default which cannot reasonably be cured within thirty (30) days, then, subject to§ 21.1 below, Landlord shall be liable to Tenant for any damages sustained by Tenant as a result of Landlord's breach. Tenant shall not have the right to terminate this Lease or to withhold, reduce, or offset any amount against any payments of Rent or any other charges due and payable under this Lease, except to the extent that a specific Lease provision permits such termination or withholding, reduction, or offset of Rent.

**20.5 HOLDER'S RIGHT TO CURE**. Tenant shall give any Holder a copy, by registered mail, of any notice of default served upon Landlord, provided that Tenant previously has been notified in writing of the address of such Holder. If Landlord fails to cure such default within the time provided in this Lease, any such Holder shall have an additional forty-five (45) days within which to cure such default by Landlord or, if such default cannot reasonably be cured within that time, such additional time as may be necessary, provided that within such forty-five (45) day period the Holder has commenced and is pursuing the remedies necessary to cure such default (including commencement of foreclosure proceedings, if necessary to effect such cure), in which event this Lease shall not be terminated while such remedies are being so pursued.

**20.6 SURVIVAL OF REMEDIES**. The remedies permitted under this Article 20, the parties' indemnities under§§ 14.4.3, 14.4.4, and14.4.5, and§ 29.5 below shall survive the termination of this Lease.

## 21 LIMITATIONS ON LANDLORD'S LIABILITY

**21.1 PERSONAL LIABILITY**. The liability of Landlord to Tenant for any default by Landlord under this Lease or arising in connection herewith or with Landlord's operation, management, leasing, repair, renovation, alteration, or any other matter relating to the Property or the Premises shall be limited to the interest of Landlord in the Property (and the rental proceeds thereof). Under no circumstances shall Landlord ever be liable for consequential or punitive damages, including damages for lost profits or for business interruption. Tenant agrees to look solely to Landlord's interest in the Property (and the rental proceeds thereof) for the recovery of any judgement against Landlord, and Landlord shall not be personally liable for any such judgement or deficiency after execution thereon. The limitations of liability contained in this Article 21 shall apply equally and inure to the benefit of Landlord's present and future partners, beneficiaries, officers, directors, trustees, shareholders, agents, and employees, and their respective partners, heirs, successors, and assigns. Under no circumstances shall any present or future general or limited partner of Landlord (if Landlord is a partnership), or trustee or beneficiary (if Landlord or any partner of Landlord is a trust) or corporate officer, director, or shareholder (if Landlord or any partner of Landlord is a corporation or company) or member (if Landlord is a limited liability company) have any liability for the performance of Landlord's obligations under this Lease.

**21.2 LIABILITY UPON TRANSFER**. The term *Landlord* as used in this Lease, so far as covenants or obligations on the part of the Landlord are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title to, or a lessee's interest in a ground lease or master lease of the Property. In the event of any transfer, assignment, or other conveyance or transfer of any such title or interest, Landlord herein named (and in case of subsequent transfers or conveyances, the current grantor) shall be automatically freed and relieved from and after the date of such transfer, assignment, or conveyance of all liability with respect to the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed; and, without further agreement, the transferee of such title or interest shall be deemed to have assumed and agreed to observe and perform any and all obligations of Landlord hereunder, during its ownership of the Premises. Landlord may transfer its interest in the Premises without the consent of Tenant, and such transfer or subsequent transfer shall not be deemed a violation on Landlord's part of any of the terms and conditions of this Lease.

## 22 ESTOPPEL CERTIFICATES

**22.1 REQUEST AND DELIVERY**. Within ten (10) days following any written request Landlord may make from time to time, Tenant without any charge therefor, shall execute, acknowledge, and deliver a statement certifying the following: (a) the Commencement Date of this Lease; (b) the fact that this Lease is unmodified and in full force and effect or, if there have been modifications hereto, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications; (c) the date to which the Rent and other sums payable under this Lease have been paid; (d) the fact that there are no current defaults under this Lease by either Landlord or Tenant except as specified in the statement; and (e) such other matters as may be reasonably requested by Landlord. Landlord and Tenant intend that any statement delivered pursuant to this Article 22 may be relied upon by any Holder, Lessor, beneficiary, purchaser, or prospective purchaser of the Building, the Complex, or any interest therein. Tenant's failure to deliver any such statement within the specified ten-day period shall constitute a material default hereunder, and Tenant shall indemnify, defend, protect, and hold Landlord harmless from and against any and all Claims which Landlord may sustain or incur as a result of or in connection with Tenant's failure or delay in delivering such statement.

**22.2 ELECTION TO SELL BUILDING**. If Landlord elects to sell the Building or to obtain loans secured by a lien on the Building, Tenant, promptly after demand, shall include with the estoppel certificate(s) provided to any prospective purchaser or lender as required under this Article 22 any financial statements of Tenant reasonably required by the purchaser or lender. The financial statements so provided shall be kept confidential as to any parties other than the purchaser or lender.

## 23 NOTICES

**23.1 MANNER OF DELIVERY**. Any notice required or permitted under this Lease shall be in writing and shall be delivered in at least one of the following ways: (a) personally or by private hand-delivery messenger service; (b) by depositing the same in the United States mail, postage prepaid, registered or certified, return receipt requested; (c) by depositing such notice, postage prepaid, with Federal Express or another nationally-recognized private overnight delivery service; or (d) by any other means permitted or required by applicable California law or statutes relevant in the context in which such notice is given. Each such notice shall be addressed to the intended recipient at such party's address set forth as follows, or at such other address as such party has theretofore specified by written notice delivered in accordance with this§ 23.1:

*if to Landlord:*

**KASHIWA FUDOSAN AMERICA, INC.**
c/o RiverRock Real Estate Group, Inc.
Attn: Property Manager
400 Oyster Point Boulevard, Suite 117
South San Francisco, CA 94080

*copy to:*

**Metro Properties, LLC, Agent**
Attn: Oyster Point Asset Manager
11150 West Olympic Boulevard, Suite 1090
Los Angeles, CA 90064

*If to Tenant:*

**DAY ONE THERAPEUTICS, INC.**
Attn: Chief Financial Officer
395 Oyster Point Boulevard, Suite 217
South San Francisco, CA 94080

**23.2 REQUIRED CONTENTS**. Every notice (other than the giving or withholding of consent or approval under the provisions of the Lease) given to a party shall state the section of the Lease pursuant to which the notice is given; the period of time within which the recipient of the notice must respond (or, if no response is required, a statement to that effect); and if applicable, that the failure to object to the notice within the stated time period will be deemed to be the equivalent of the recipient's approval, consent to, or satisfaction with the subject matter of the notice.

**23.3 PRESUMPTION OF RECEIPT**. Any notice delivered personally or by private messenger service shall be deemed delivered on the next day following the deposit of such notice at the recipient's address. Any notice delivered by Federal Express or another nationally-recognized private overnight delivery service shall be deemed delivered on the earlier of (y) the second day following deposit thereof with the carrier or (z) the delivery date shown on the carrier's record of delivery. Any notice delivered by mail in the manner specified in§ 23.1 shall be deemed delivered on the earlier of (a) the third day following deposit thereof in the United States Mail or (b) the delivery date shown on the return receipt prepared in connection therewith. Refusal by Tenant or Landlord to accept either certified or registered mail shall constitute a waiver of such notice by the respective party.

## 24 BROKERS

**24.1 TENANT'S REPRESENTATION**. Tenant represents and warrants to Landlord that Tenant has dealt with no broker in connection with this Lease other than Savills Studley and Cushman & Wakefield of California, Inc. Tenant shall be responsible for all foreseeable consequences of damages (including attorneys' fees and costs) resulting from any claims that may be asserted against Landlord by any other broker, finder, or other person with whom Tenant has or purportedly has dealt in connection with this Lease, and Tenant agrees to indemnify, defend, protect, and hold Landlord harmless in connection with any such Claims which may be asserted.

## 25 RIGHTS RESERVED TO LANDLORD

**25.1 ACCESS TO PROPERTY**. All of the Property except the inside surfaces of all walls, windows, and doors bounding the Premises (including exterior Building walls, core corridor walls and doors, and any core corridor entrance) and any space in or adjacent to the Premises used for shafts, stacks, pipes, conduits, fan rooms, ducts, electric, or other utilities, sinks or other Building facilities, and the use thereof, as well as access thereto through the Premises for the purpose of operation, maintenance, decoration, and repair, are reserved to Landlord . Tenant shall permit Landlord to install, use, replace, and maintain pipes, ducts, and conduits within the demising walls, bearing columns, and ceilings of the Premises.

**25.2 CONTROL OF PROPERTY**. Except to the extent expressly limited herein, Landlord reserves full rights to control the Property (which rights may be exercised without subjecting Landlord to claims for constructive eviction, abatement of Rent, damages, or other claims of any kind), including more particularly the following rights:

**(a) Name, Address, Access**. To change the name or street address of the Property; install and maintain signs on the exterior and interior of the Property; retain at all times, and use in appropriate instances, keys to all doors within and into the Premises; grant to any Person the right to conduct any business or render any service at the Property, whether or not it is the same or similar to the use permitted Tenant by this Lease; and have access for Landlord and other tenants of the Property to any mail chutes located on the Premises according to the rules of the United States Postal Service.

**(b) Entry into Premises**. To enter the Premises at reasonable hours for reasonable purposes, including inspection and supplying cleaning service or other services to be provided Tenant hereunder, to show the Premises to current and prospective lenders, ground lessors, insurers, and prospective purchasers, tenants and brokers, at reasonable hours; and if Tenant shall abandon the Premises at any time, or shall vacate the same during the last three (3) months of the Term, to decorate, remodel, repair, or alter the Premises.

**(c) Safety Measures**. To limit or prevent access to the Property, shut down elevator service, activate elevator emergency controls, or otherwise take such action or preventative measures deemed necessary by Landlord for the safety of tenants or other occupants of the Property or the protection of the Property and other property located thereon or therein, in case of fire, invasion, insurrection, riot, civil disorder, public excitement or other dangerous condition, or threat thereof.

**(d) Improvements**. To decorate and to make alterations, additions and improvements, structural or otherwise, in or to the Property or any part thereof, and any adjacent building, structure, parking facility, land, street or alley (including changes and reductions in corridors, lobbies, parking facilities and other public areas and the installation of kiosks, planters, sculptures, displays, escalators, mezzanines, and other structures, facilities, amenities and features therein, and changes for the purpose of connection with or entrance into or use of the Property in conjunction with any adjoining or adjacent building or buildings, now existing or hereafter constructed). In connection with such matters, or with any other repairs, maintenance, improvements or alterations, in or about the Property, Landlord may erect scaffolding and other structures reasonably required, and during such operations may enter upon the Premises and take into and upon or through the Premises, all materials required to make such repairs, maintenance, alterations or improvements, and may close public entry ways, other public areas, restrooms, stairways or corridors.

**25.3 LANDLORD'S RIGHT TO MAINTAIN**. Except as expressly otherwise provided in this Lease, Landlord shall have no liability to Tenant by reason of any inconvenience, annoyance, interruption, or injury to business arising from Landlord's making any repairs or changes which Landlord is required or permitted to make by this Lease, by any other lease or agreement affecting the Property, or by Law, in or to any portion of the Property, Complex, or the Premises, including the Systems and Equipment and appurtenances of the Property or the Premises, provided that Landlord shall use due diligence with respect thereto and shall perform such work, except in case of emergency, at times reasonably convenient to Tenant and otherwise in such manner as will not materially diminish Tenant's beneficial enjoyment of the Premises for their intended use.

**25.4 REASONABLE NOTICE**. In connection with entering the Premises to exercise any of the foregoing rights, Landlord shall: (a) provide reasonable advance written or oral notice to Tenant's on-site manager or other appropriate person (except in emergencies, or for routine cleaning or other routine matters), and (b) take reasonable steps to avoid any unreasonable interference with Tenant's business.

## 26 BUILDING PLANNING

**26.1 RELOCATION RIGHT**. In the event Landlord requires the Premises for use in conjunction with another suite or for other reasons connected with Landlord's planning program for the Building, upon notifying Tenant in writing, Landlord shall have the right to move Tenant to other space in the Building or in the Complex, provided such space is not more than ten percent (10%) smaller or larger than the Premises. If Landlord elects to move Tenant to such other space, Landlord shall give Tenant at least thirty (30) days' prior written notice of Landlord's intention to relocate the Premises, Landlord shall pay for (a) all direct, out-of-pocket, reasonable expenses of Tenant in moving from the Premises to the new space and (b) the cost of improving the new space so that the level of improvements in the new space is comparable to the level of improvements in the Premises, and as nearly as practicable, the physical relocation of the Premises shall take place on a weekend and shall be completed before the following Monday. All the terms and conditions of the original Lease shall remain in full force and effect, except that (i) a revised **Exhibit B** shall become a part of this Lease and shall reflect the location of the new space; and (ii) Tenant agrees to execute promptly upon notice from Landlord an amendment to this Lease amending the Table and corresponding sections of the Lease in order to reflect all correct data for the new space.

## 27 HOLDING OVER

**27.1 HOLDOVER**. Unless Landlord expressly agrees otherwise in writing, Tenant shall pay Landlord one hundred fifty percent (150%) of the amount of Rent then applicable prorated on per diem basis for each day Tenant shall retain possession of the Premises or any part thereof after expiration of the Term or earlier termination of this Lease, together with all damages sustained by Landlord on account thereof. In the case of any such holdover, the Lease shall be converted to a month-to-month tenancy which either party may terminate upon written notice of not less than thirty (30) days to the other. Tenant shall remain bound to comply with all provisions of this Lease until Tenant vacates the Premises and shall be subject to the provisions of§ 11.1 above.

**27.2 PERMISSIVE MONTH-TO-MONTH TENANCY**. Notwithstanding the foregoing to the contrary, at any time before or after expiration or earlier termination of the Term of the Lease, Landlord may serve notice advising Tenant of the amount of Rent and other terms required, should Tenant desire to enter a month-to-month tenancy. If Tenant shall hold over more than one full calendar month after such notice, Tenant shall thereafter be deemed a month-to-month tenant, on the terms and provisions of this Lease then in effect, as modified by Landlord's notice, except that Tenant shall not be entitled to any renewal or expansion rights contained in this Lease or any amendments hereto.

## 28 PARKING

**28.1 AVAILABLE PARKING**. Subject to the terms and conditions contained in the balance of this Article 28, Landlord agrees to make available to Tenant during the Term of this Lease and any renewal term up to a maximum of seventeen (17) parking spaces on a non-exclusive basis in the area(s) designated by Landlord for parking in the Building's parking lots and/ or facility (the "Parking Facility"). Said parking spaces shall be in locations designated by Landlord, and parking shall be on a first-come-first-served, unassigned, nonreserved basis. Landlord reserves the right to designate different locations or different parking areas for Tenant's use without any liability to Tenant and Tenant agrees that any change shall not give rise to any claims or offset against Landlord hereunder. Tenant shall abide by any and all parking regulations and rules established from time to time by Landlord or Landlord's parking operator. Landlord reserves the right in its sole and absolute discretion to restrict or prohibit the use of the Parking Facility for any vehicles other than passenger automobiles, such as full-sized vans or trucks. Tenant shall not permit any vehicles belonging to Tenant or Tenant's employees, agents, customers, contractors, or invitees to be loaded, unloaded, or parked in areas other than those designated by Landlord for such activities and shall not permit any such vehicles to be parked overnight in the Parking Facility; provided, Tenant may apply for an Overnight Parking Permit from Landlord's Property Manager for limited periods for good cause relating to Tenant's business, subject to such rules and regulations governing such overnight parking as Landlord's Property Manager may establish from time to time. A failure to comply with the foregoing provisions shall afford Landlord the right without notice to remove any vehicles involved and to charge the cost to Tenant, which cost shall be immediately due and payable upon demand by Landlord.

**28.2 USE AT TENANT'S OWN RISK**. Landlord shall have no obligation to monitor the use of the Parking Facility. Tenant's and its employees' use of the Parking Facility shall be at the sole risk of Tenant and its employees. Unless caused by the gross negligence or willful harmful act of Landlord, Landlord shall have no responsibility or liability for any injury or damage to any person or property by or as a result of the use of the Parking Facility (or substitute parking) by Tenant and its employees, whether by theft, collision, criminal activity, or otherwise, and Tenant hereby assumes, for itself and its employees, all risks associated with any such occurrences in or about the Parking Facility.

## 29 MISCELLANEOUS PROVISIONS.

**29.1 GENERAL DEFINITIONS**. The definitions which follow shall apply generally to the provisions of this Lease.

**(a)** The term ***business days*** means Monday through Friday inclusive, excluding Holidays as defined in§ 8.1.1 above. Throughout this Lease, wherever *days* is used the term shall refer to calendar days. Wherever the term business days is used the term shall refer to *business days* as defined hereunder.

**(b)** The term ***mortgage*** shall include any mortgage or deed of trust, and the term ***mortgagee*** shall include a trustee.

**(c)** The terms ***include***, ***including***, and ***such as*** shall each be construed as if followed by the phrase "without limitation." The rule of *eiusem generis* shall not be applicable to limit a general statement following or referrable to an enumeration of specific matters to matters similar to the matters specifically mentioned.

**(d)** The term ***obligations under this Lease*** and words of like import shall mean the covenants to pay Rent and Additional Rent under this Lease and all of the other covenants and conditions contained in this Lease. Any provision in this Lease that one party or the other or both shall do or not do or shall cause or permit or not cause or permit a particular act, condition, or circumstance shall be deemed to mean that such party so covenants or both parties so covenant, as the case may be.

**(e)** The term ***Tenant's obligations hereunder*** and words of like import and the term ***Landlord's obligations hereunder*** and words of like import shall mean the obligations under this Lease which are to be performed or observed by Tenant, or by Landlord, as the case may be. Reference to ***performance*** of either party's obligations under this Lease shall be construed as "performance and observance."

**(f)** Reference to Tenant being or not being ***in default hereunder*** or words like import shall mean that Tenant is in default in the performance of one or more of Tenant's obligations hereunder, or that Tenant is not in default in the performance of any of Tenant's obligations hereunder, or that a condition of the character described in § 20.1 above has occurred and continues or has not occurred or does not continue, as the case may be.

**(g)** References to Landlord as having ***no liability to Tenant*** or being ***without liability to Tenant*** shall mean that Tenant is not entitled to terminate this Lease or to claim actual or constructive eviction, partial or total, or to receive any credit, allowance, setoff, abatement, or diminution of Rent, or to be relieved in any manner of any of its other obligations hereunder, or to be compensated for loss or injury suffered or to enforce any other 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.

**(h)** The term ***requirements of insurance bodies*** and words of like import shall mean rules, regulations, orders, and other requirements of the California Board of Fire Underwriters and/ or the California Fire Insurance Rating Organization and/or any other similar body performing the same or similar functions and having jurisdiction or cognizance of the Property and/or the Premises.

**(i)** The term ***repair*** shall be deemed to include restoration and replacement as may be necessary to achieve and/ or maintain good working order and condition.

**(j)** Reference to ***termination of this Lease*** includes expiration or earlier termination of the Term of this Lease or cancellation of this Lease pursuant to any of the provisions of this Lease or to Law. Upon a termination of this Lease, the Term and estate granted by this Lease shall end at noon of the date of termination as if such date were the date of expiration of the Term of this Lease, and neither party shall have any further obligation or liability to the other after such termination, except as shall be expressly provided for in this Lease and except for any such obligation as by its nature or under the circumstances can only be, or by the provisions of this Lease may be, performed after such termination; and in any event, unless expressly provided to the contrary in this Lease, any liability for a payment or obligation which shall have accrued to or with respect to any period ending at the time of termination shall survive the termination of this Lease.

**(k)** The term ***in full force and effect*** when herein used in reference to this Lease as a condition to the existence or exercise of a right on the part of Tenant shall be construed in each instance as including the further condition that at the time in question no default on the part of Tenant exists, and no event has occurred which has continued to exist for such period of time (after the notice, if any, required by this Lease), as would entitle Landlord to terminate this Lease or to dispossess Tenant.

**(l)** The term ***Tenant*** shall mean Tenant herein named or any assignee, heir, distributee, executor, administrator, legal representative, or other successor in interest (immediate or remote) of Tenant herein named, while such Tenant or such assignee or other successor in interest, as the case may be, is in possession of the Premises as owner of the Tenant's estate and interest granted by this Lease and also, if Tenant is not a single individual or a corporation, all of the persons, firms, and corporations then comprising Tenant; and their liability hereunder shall be joint and several.

**29.2 LIGHT AND AIR**. No diminution of light, air or view by any structure which may hereafter be erected (whether or not by Landlord) shall entitle Tenant to any reduction of Rent under this Lease, result in any liability of Landlord to Tenant, or in any other way affect this Lease.

**29.3 WAIVER OF TERMS**. If either Landlord or Tenant waives the performance of any term, covenant, or condition contained in this Lease, such waiver shall not be deemed to be a waiver of the term, covenant, or condition itself or a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein. Furthermore, the acceptance of Rent by Landlord shall not constitute a waiver of any preceding breach by Tenant of any term, covenant, or condition of this Lease, regardless of Landlord's knowledge of such preceding breach at the time Landlord accepts such Rent. Failure by Landlord or Tenant to enforce any of the terms, covenants, or conditions of this Lease for any length of time shall not be deemed to waive or to decrease the right of Landlord or Tenant to insist thereafter upon strict performance by Landlord or Tenant, as the case may be. Waiver by Landlord or Tenant of any term, covenant, or condition contained in this Lease may only be made by a written document signed by Landlord.

**29.4 FAILURE TO DELIVER STATEMENTS**. Landlord's failure during the Term of this Lease to prepare and deliver any of the Statements, estimates, notices, or bills contemplated or required under this Lease, or Landlord's failure to make a demand, shall not in any way cause Landlord to forfeit or surrender its rights to collect any of the foregoing items of Rent which may have become due during the Term of this Lease.

**29.5 ATTORNEY'S FEES**. In the event that any action or proceeding (including arbitration) is brought to enforce or interpret any term, covenant, or condition of this Lease on the part of Landlord or Tenant, the prevailing party in such action or proceeding (whether after trial or upon appeal) shall be entitled to recover from the party not prevailing its expenses therein, including reasonable attorneys' fees and all allowable costs as fixed by the court.

**29.6 CORPORATE REVIEW FEES**. Notwithstanding anything to the contrary in this Lease, Tenant agrees to reimburse Landlord for its reasonable costs and/ or attorneys' fees incurred in the review of (i) any transaction with respect to which Tenant is required to give notice under § 17.13 of the Lease and/ or (ii) any other change of name, registration, corporate status or merger, acquisition, consolidation, transfer, loan, security, or collateral transaction, or other matter related to Tenant's legal or corporate status or the financing of any loan or collateral or security associated with the same requiring Landlord's attention and need to seek legal advice.

**29.7 JURY TRIAL**. Tenant and Landlord each hereby waive their respective rights to a trial by jury under applicable Laws in the event of any litigation or dispute between Landlord and Tenant arising out of or in connection with this Lease and the parties' performance thereunder.

**29.8 MERGER**. Notwithstanding the acquisition (if same should occur) by the same party of the title and interests of both Landlord and Tenant under this Lease, there shall never be a merger of the estates of Landlord and Tenant under this Lease, but instead the separate estates, rights, duties, and obligations of Landlord and Tenant, as existing hereunder, shall remain unextinguished and continue, separately, in full force and effect until this Lease expires or otherwise terminates in accordance with the express provisions herein contained.

**29.9 NO MERGER ON VOLUNTARY SURRENDER**. A voluntary or other surrender of this Lease by Tenant or the mutual cancellation of this Lease shall not work a merger and shall, at the option of Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such subleases or subtenancies.

**29.10 CONSENT**. Notwithstanding anything contained in this Lease to the contrary, Tenant shall have no claim and hereby waives the right to any claim against Landlord for money damages by reason of any refusal, withholding, or delaying by Landlord of any consent, approval, statement, or satisfaction; and in such event, Tenant's only remedies therefor shall be an action for specific performance, injunction, or declaratory judgement to enforce any right to such consent, approval, statement, or satisfaction.

**29.11 COUNTERPARTS**. This Lease may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

**29.12 FINANCIAL STATEMENTS**. In order to induce Landlord to enter into this Lease, Tenant agrees that it shall promptly furnish Landlord, from time to time, upon Landlord's written request, with financial statements reflecting Tenant's current financial condition. Tenant represents and warrants that all financial statements, records, and information furnished by Tenant to Landlord in connection with this Lease are and shall be true, correct, and complete in all respects. Landlord shall hold all such financial statements in confidence and shall not disclose any portion of such financial statements to any party other than its financial and legal advisors, who shall also be bound by the confidentiality provision set forth in this§ 29.12.

**29.13 GENDER AND NUMBER**. Words used in neuter gender include the feminine and masculine, where applicable, and words used in the singular or plural shall include the opposite number if appropriate.

**29.14 JOINT AND SEVERAL OBLIGATION**. If more than one person executes this Lease as Tenant, each of them is jointly and severally liable for the keeping, observing, and performing of all of the terms, covenants, conditions, provisions, and agreements of this Lease to be kept, observed, and performed by Tenant. The term ***Tenant*** as used in this Lease shall mean and include each of such signatories jointly and severally. The act of or notice from, or notice or refund to, or the signature of, any one or more of such signatories with respect to the tenancy or this Lease, including any renewal, extension, expiration, termination, or modification of this Lease, shall be binding upon each and all of the persons executing this Lease as Tenant with the same force and effect as if each and all of them had so acted or so given or received such notice or refund or so signed.

**29.15 HEADINGS AND SECTION NUMBERS**. The headings and titles of the articles and sections of this Lease are used for convenience only and shall have no effect upon the construction or interpretation of this Lease. Wherever a reference is made in this Lease to a particular article or section, such reference shall be deemed to include all subsections following such section reference, unless the contrary is expressly provided in connection with such reference. All references in this Lease to numbered articles, numbered sections, and lettered exhibits are references to articles and sections of this Lease and exhibits annexed to (and thereby made part of) this Lease, as the case may be, unless expressly otherwise designated in the context.

**29.16 TIME**. Time is of the essence of this Lease and all of its provisions.

**29.17 APPLICABLE LAW**. This Lease shall in all respects be governed by and interpreted in accordance with the laws of the State of California without reference to its conflicts of law principles. If suit is brought by a party to this Lease, the parties agree that jurisdiction of such action shall be vested exclusively in the state courts of the State of California, County of San Mateo, or in the United States District Court for the Northern District of California, and with its execution and delivery of this Lease Tenant waives any defense it might otherwise have against the jurisdiction of such courts.

**29.18 SEVERABILITY**. If any provision of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**29.19 SIGNS**. Tenant shall not place or permit to be placed in or upon the Premises where visible from outside the Premises or any part of the Building, any signs, notices, drapes, shutters, blinds or window coatings, or displays of any type without the prior written consent of Landlord. Landlord shall consent to the location at the cost of Tenant of a building standard sign on or near the entrance of the Premises and shall include Tenant in the Building and Complex directories located in the Building at no cost to Tenant. Landlord reserves the right in Landlord's sole discretion to place and locate on the roof and exterior of the Building and Complex and in any area of the Building and the Complex not leased to Tenant, such signs, notices, displays and similar items as Landlord deems appropriate in the proper operation of the Building and the Complex.

**29.20 EXECUTION BY LANDLORD**. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Premises. This document becomes effective and binding only upon execution and delivery hereof by Tenant and by Landlord. No act or omission of any employee or agent of Landlord or of Landlord's broker shall alter, change or modify any of the provisions hereof.

**29.21 USE OF NAME**. Tenant shall not use the name of the Building or Complex for any purpose other than the address of the business to be conducted by Tenant in the Premises. Tenant shall not use any picture of the Building or Complex in its advertising, stationery or in any other manner so as to imply that the entire Building or Complex is leased by Tenant. Landlord expressly reserves the right at any time to change the name or street address of the Building and/ or Complex without in any manner being liable to Tenant therefor.

**29.22 NONRECORDABILITY OF LEASE**. Tenant agrees that in no event shall this Lease or a memorandum hereof be recorded without Landlord's express prior written consent, which consent Landlord may withhold in its sole discretion.

**29.23 CONSTRUCTION**. All provisions hereof, whether covenants or conditions, shall be deemed to be both covenants and conditions. The definitions contained in this Lease, shall be used to interpret the Lease. All rights and remedies of Landlord and Tenant shall, except as otherwise expressly provided, be cumulative and non-exclusive of any other remedy at law or in equity.

**29.24 FORCE MAJEURE DELAYS**. This Lease and the obligations of Landlord or Tenant, as the case may be, hereunder shall be excused during the period that such party is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of force majeure, strike, labor troubles, acts of God, acts of government, unavailability of materials or labor, or any other cause beyond the reasonable control of such party (collectively "Force Majeure Delays"); provided, however, that Force Majeure Delay shall not excuse any obligation to pay money.

**29.25 AUTHORITY**. If Tenant is a corporation, Tenant represents and warrants that Tenant is qualified to do business in California and that each individual executing this Lease on behalf of Tenant is duly authorized to execute and deliver this Lease on behalf of Tenant and shall deliver appropriate certification to that effect if requested. If Tenant is a limited liability company, partnership, joint venture, or other unincorporated association, Tenant represents and warrants that each individual executing this Lease on behalf of Tenant is duly authorized to execute and deliver this Lease on behalf of Tenant and that this Lease is binding on Tenant. Furthermore, Tenant agrees that the execution of any written consent hereunder, or any written modification or termination of this Lease, by any general partner or member of Tenant or any other authorized agent of Tenant, shall be binding on Tenant.

**29.26 NONDISCLOSURE**. Tenant agrees that it shall not disclose any of the matters set forth in this Lease or disseminate or distribute any information concerning the terms, covenants, or conditions thereof to any person, firm, or entity, other than a prospective assignee or subtenant of the Premises, without first obtaining the express written approval of Landlord; provided, however, that Tenant may disclose the contents of this Lease to any director, officer, or employee of Tenant, to Tenant's lawyers, accountants, or other third party consultants or professionals, to any lenders, investors, or others to whom Tenant provides financial statements, or in response to any legally effective demand for disclosure pursuant to court order or from any other properly constituted legal authority.

**29.27 QUIET ENJOYMENT**. So long as Tenant is not in default under this Lease, Tenant shall have quiet enjoyment of the Premises for the Term, subject to all the terms and conditions of this Lease and all liens and encumbrances prior to this Lease.

**29.28 ACCESS INSPECTION DISCLOSURE**. Pursuant to California Civil Code § 1938, Landlord hereby notifies Tenant that, as of the date of this Lease, the Premises have not undergone inspection by a "Certified Access Specialist" to determine whether the Premises meet all applicable construction-related accessibility standards under California Civil Code § 55.53, and the Premises have not been determined to meet all applicable construction-related accessibility standards pursuant to Civil Code § 55.53. In addition, Civil Code§ 1938(e) requires that the following language be inserted into this Lease:

> *A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.*

Landlord is acting in compliance with applicable Laws by inserting the foregoing paragraph into this Lease, but Landlord thereby expresses no opinion as to the meaning or applicability of§ 1938 and offers no legal advice as to its meaning or applicability. Tenant is informed and agrees that it will seek its own legal counsel if it has questions regarding the meaning of§ 1938 or its applicability to this Lease.

**29.29** [*]

**29.30 EXHIBITS AND ATTACHMENTS**. All exhibits and attachments referred to in the body of this Lease are deemed attached hereto and incorporated herein by reference. The parties have attached the following exhibits to the Lease prior to execution:

| | |
|---|---|
| Exhibit A | Site Plan |
| Exhibit B | Floor Plan of Premises |
| Exhibit C | Rules and Regulations |
| Exhibit D | Athletic Facility Use Agreement |
| Exhibit E | Commencement Date Agreement |

**29.31 ENTIRE AGREEMENT**. This Lease, together with its exhibits, contains all the agreements of the parties hereto and supersedes any previous negotiations. There have been no representations made by the Landlord or understandings made between the parties other than those set forth in this Lease and its exhibits. This Lease may not be modified except by a written instrument duly executed by the parties hereto.

**IN WITNESS WHEREOF**, the parties have executed this Lease as of the date first above written.

*Landlord:*

**KASHIW A FUDOSAN AMERICA, INC.**,
a California corporation

[*]

By: /s/ Tomoki Miura
Tomoki Miura, Senior Manager

*Tenant:*

**DAY ONE THERAPEUTICS, INC.**,
a Delaware corporation

By: /s/ Julie Grant
CEO
*[name typed]*

Its: _____

**CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [*], HAS BEEN OMITTED BECAUSE IT IS NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE AND CONFIDENTIAL.**

***Execution Version***
***Confidential***

# ASSET TRANSFER AND LICENSE AGREEMENT

This Asset Transfer and License Agreement ("**Agreement**") is made effective as of December 16, 2019 (the "**Effective Date**") by and between **DOT THERAPEUTICS-1, INC.** ("**Day One**"), a Delaware corporation and an Affiliate of Day One Holdings, LLC, having a place of business at 2765 Sand Hill Road, Menlo Park, CA 94025, and **MILLENNIUM PHARMACEUTICALS, INC.** ("**Takeda**"), a Delaware corporation and an Affiliate of Takeda Pharmaceutical Company Limited, having a place of business at 40 Landsdowne Street, Cambridge, MA 02139.

## RECITALS

**WHEREAS**, pursuant to a Collaboration Agreement (the "**Original Agreement**"), effective as of August 27, 2004, by and between Sunesis Pharmaceuticals, Inc. ("**Sunesis**") and Biogen Idec MA Inc. ("**Biogen Idec**"), as amended, Sunesis and Biogen Idec collaborated on the discovery and development of small molecules that modulated certain targets, and discovered and commenced development of several compounds, including the compound designated as BIIB024;

**WHEREAS**, pursuant to a Termination and Transition Agreement, dated as of March 31, 2011, Sunesis, Biogen Idec and Takeda agreed that (a) Takeda succeeded to the rights of Biogen Idec under the Original Agreement with respect to the Compound and certain other compounds and, in order to effectuate the foregoing, (b) effective of as March 31, 2011, (i) Sunesis and Takeda entered into that certain License Agreement (the "**License Agreement**"), pursuant to which, among other things, Sunesis granted Takeda license to its interest in the jointly owned intellectual property to develop and commercialize such Compound, (ii) Sunesis and Biogen Idec entered into an amendment and restatement of the Original Agreement and (iii) Takeda and Biogen Idec entered into an asset transfer agreement (the "**Takeda-Biogen Agreement**");

**WHEREAS**, effective as of January 8, 2014, Takeda and Sunesis amended and restated the License Agreement (the "**Amended and Restated License Agreement**"), pursuant to which Takeda grants Sunesis rights to develop and commercialize compounds binding human 3-phosphoinositide-dependent protein kinase-1 (the "**PDK Target**"), but not compounds binding the Raf Target, and certain other rights with respect to such compounds;

**WHEREAS**, pursuant to the License Agreement and the Amended and Restated License Agreement, Takeda, among other things, developed TAK-580 (also known as BIIB024);

**WHEREAS**, to facilitate the Contemplated Transactions, Takeda and Sunesis are amending and restating the terms of the Amended and Restated License Agreement into two separate agreements (a) an agreement which contains the terms and conditions pursuant to which, among other things, Takeda (or its assignee) will have a license under certain intellectual property rights of Sunesis to develop and commercialize compounds binding the Raf Target (but not compounds binding the PDK Target), and

certain other rights with respect to such compounds (the "**Sunesis License**"), and (b) an agreement, which contains the terms and conditions pursuant to which, among other things, Sunesis will have a license under certain intellectual property rights of Takeda to develop and commercialize compounds binding the PDK Target (but not compounds binding the Raf Target), and certain other rights with respect to such compounds;

**WHEREAS**, Takeda owns the Assigned Technology and Controls certain Know-How and Patent Rights related solely to, or otherwise necessary to Exploit, one or more Products or the Compound in the Day One Field in the Territory;

**WHEREAS**, pursuant to this Agreement, among other things, Takeda will sell, assign, or otherwise transfer to Day One, and Day One will purchase or otherwise acquire from Takeda, the Acquired Assets;

**WHEREAS**, Takeda has confidence in Day One's ability to Develop and Commercialize the Products in the Day One in the Territory and make such product available to patients and accordingly, under specific circumstances in which all Development of Products has been discontinued, rights under the Assigned Technology and Licensed Intellectual Property would revert to Takeda on the terms and conditions set forth herein;

**WHEREAS**, Day One desires to obtain, and Takeda wishes to grant, certain licenses under the Licensed Intellectual Property on the terms and conditions set forth herein; and

**WHEREAS**, Takeda desires to obtain, and Day One wishes to grant, certain licenses for the Exploitation of Takeda Products under the Assigned Technology in the Takeda Field, on the terms and conditions set forth herein.

**NOW THEREFORE**, the Parties, intending to be legally bound hereby, agree as follows:

## ARTICLE 1
## DEFINITIONS

**1.1** "**Acquired Assets**" has the meaning set forth in Section 2.1.

**1.2** "**Acquiring Party**" has the meaning set forth in Section 1.26.

**1.3** "**Adverse Event**" or "**AE**" has the meaning set forth in 21 C.F.R. § 312.32 and generally means any untoward medical occurrence associated with the use of a product in human subjects, whether or not considered related to such product. An AE does not necessarily have a causal relationship with a product, that is, an AE can be any unfavorable and unintended sign (including an abnormal laboratory finding), symptom, or disease temporally associated with the use of such product.

**1.4** "**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with such Person, for so long as such relationship continues to exist. For purposes of this definition only, "controls" and, with correlative meanings, the terms "controlled by" and "under common control with" another Person will mean:

(a) direct or indirect ownership of more than 50% of the outstanding voting securities or other voting interest of the other Person; or

(b) direct or indirect possession of the power to elect or appoint more than 50% of the members of the governing body of the other Person;

*provided* that in the case of jurisdictions in which the maximum percentage ownership permitted by Applicable Law for a foreign investor is less than 50%, such lower percentage will be substituted in clause 1.4(a) of the preceding sentence. Neither of the Parties will be deemed to be an "Affiliate" of the other solely as a result of their entering into this Agreement.

**1.5** "**Agreement**" has the meaning set forth in the Preamble.

**1.6** "**Applicable Law**" means applicable laws, statutes, rules, regulations, and other pronouncements having the effect of law of any Governmental Authority that may be in effect from time to time, including disclosure obligations required by any stock exchange or securities commission having authority over a Party and any applicable rules, regulations, guidances, or other requirements of any Regulatory Authority that may be in effect from time to time.

**1.7** "**Assigned Agreements**" means those certain agreements to which Takeda or its Affiliates is a party that are set forth on Schedule 1.7.

**1.8** "**Assigned Inventory**" has the meaning set forth in Section 2.1.

**1.9** "**Assigned Know-How**" means the Know-How set forth on Schedule 1.9, which lists the Know-How Controlled by Takeda or its Affiliates that is related solely to one or more Products or the Compound and not to any other product Controlled by Takeda or any of its Affiliates.

**1.10** "**Assigned Patent Rights**" means the Patent Rights set forth on Schedule 1.10.

**1.11** "**Assigned Regulatory Submissions**" means the Regulatory Submissions set forth on Schedule 1.11, which lists the Regulatory Submissions that are Controlled by Takeda or its Affiliates and relate solely to one or more Products or the Compound and not to any other product Controlled by Takeda or any of its Affiliates.

**1.12** "**Assigned Technology**" means the Assigned Know-How and the Assigned Patent Rights.

**1.13** "**Basket**" has the meaning set forth in Section 7.4(c).

**1.14** "**Calendar Year**" means any calendar year beginning on January 1st and ending on December 31st.

**1.15** "**Cap**" means [*].

**1.16** "**Change of Control**" means, with respect to a Party or any of its Affiliates: [*].

**1.17** "**Claims**" means collectively, any and all demands, claims, actions, and proceedings (whether criminal or civil, in contract, tort, or otherwise) for Losses.

**1.18** "**Clinical Trial**" means any clinical trial conducted in humans, including any phase I clinical trial, phase II clinical trial, phase III clinical trial, or post-Regulatory Approval clinical trial; provided, further, that treatment of patients for compassionate use, including in an expanded access program, single patient program, named patient program or a single patient IND shall not be included in determining whether a patient has been dosed thereunder.

**1.19** "**Code**" means the Internal Revenue Code of 1986, as amended.

**1.20** "**Commercialization**" means any and all activities directed to the marketing, promotion, distribution, offering for sale, sale, having sold, importing, having imported, exporting, having exported, or other commercialization of a pharmaceutical product, but excluding activities directed to Manufacturing, Development, or Medical Affairs. "**Commercialize**," "**Commercializing**," and "**Commercialized**" will be construed accordingly.

**1.21** "**Commercially Reasonable Efforts**" means, with respect to the Exploitation of a Product by Day One, [*].

**1.22** "**Common Stock**" means shares of the Day One's common stock, par value $0.0001 per share.

**1.23** "**Compound**" means TAK-580 and any metabolites, salts, esters, hydrates, solvates, isomers, enantiomers, crystalline forms, co-crystalline forms, amorphous forms, free acid forms, free base forms, pro-drug (including any ester pro-drug) forms, racemates, polymorphs, chelates, stereoisomers, or tautomers of TAK-580, and all optically active forms thereof.

**1.24** "**Confidential Information**" means with respect to each Party, all Know-How or other information, including proprietary information and materials (whether or not patentable) regarding or embodying such Party's technology, products, business information, or objectives, that is communicated by or on behalf of the Disclosing Party to the Receiving Party or its permitted recipients, including the terms and conditions of this Agreement.

**1.25** "**Contemplated Transactions**" means, collectively, the transactions contemplated by this Agreement, other than the Series A Preferred Stock Transaction Agreements, including (a) the sale and purchase of the Acquired Assets and (b) the license of the Licensed Intellectual Property.

**1.26** "**Control**" or "**Controlled**" means the possession by a Person (whether by ownership, license, or otherwise other than pursuant to this Agreement) of, (a) with respect to any tangible Know-How, the legal authority or right to physical possession of such tangible Know-How, with the right to provide such tangible Know-How to the other Party on the terms set forth herein, (b) with respect to Patent Rights, Regulatory Approvals, Regulatory Submissions, intangible Know-How, or other Intellectual Property, the legal authority or right to grant a license, sublicense, access, or right to use (as applicable) to the other Party under such Patent Rights, Regulatory Approvals, Regulatory Submissions, intangible Know-How, or other Intellectual Property on the terms set forth herein, or (c) with respect to any product, the legal authority to grant a license or sublicense (other than pursuant to this Agreement) of exclusive rights under Patent Rights that Cover such product or proprietary Know-How that is used in connection with the Manufacture, use, or Commercialization of such product, in each case ((a), (b) and (c)), without breaching or otherwise violating the terms of any arrangement or agreement with a Third Party in existence as of the time such Party or its Affiliate would first be required hereunder to grant the other Party such access, right to use, licenses, or sublicense. Notwithstanding the foregoing, in the case of any Intellectual Property that is acquired by or licensed to a Party after the Effective Date (the "**Acquiring Party**") that (i)(A) with respect to any tangible Know-How within such Intellectual Property, the acquiring Party has the legal authority or right to physical possession of such tangible Know-How, with the right to provide such tangible Know-How to the other Party on the terms set forth herein, (B) with respect to Patent Rights, Regulatory Approvals, Regulatory Submissions, intangible Know-How, or other Intellectual Property within such Intellectual Property, the Acquiring Party has the legal authority or right to grant a license, sublicense, access, or right to use (as applicable) to the other Party under such Patent Rights, Regulatory Approvals, Regulatory Submissions, intangible Know-How, or other Intellectual Property on the terms set forth herein, or (C) with respect to any product within such Intellectual Property, the Acquiring Party has the legal authority to grant a license or sublicense (other than pursuant to this Agreement) of exclusive rights under Patent Rights that Cover

such product or proprietary Know-How that is used in connection with the Manufacture, use, or Commercialization of such product, in each case ((A), (B), and (C)), without breaching or otherwise violating the terms of any arrangement or agreement with a Third Party in existence as of the time such Party or its Affiliate would first be required hereunder to grant the other Party such access, right to use, licenses, or sublicense, and (ii) the practice of which by the other Party solely with respect to the Compound or any Product would give rise to any payment obligation to the applicable Third Party, then such Intellectual Property will be deemed Controlled by the Acquiring Party for the purposes of the licenses granted hereunder only if such other Party agreed to pay and does in fact pay to such Third Party or the Acquiring Party, at the Acquiring Party's election, the applicable payment obligations that are directly attributable to the use of such Intellectual Property in the Development, Manufacture, or Commercialization of the Compound or any Product by or on behalf of such other Party, its Affiliates or (sub)licensees.

**1.27** "**Cover**", "**Covers**" or "**Covered**" means, with respect to a particular subject matter at issue and a relevant Patent Right or individual claim in such Patent Right, as applicable, that the manufacture, use, sale, offer for sale, or importation of such subject matter would fall within the scope of one or more claims in such Patent Right or the individual claim of such Patent Right.

**1.28** "**Day One Field**" means all fields of use for the prevention, diagnosis, or treatment of all diseases or conditions, other than the fields of use included in the Takeda Field, subject to Section 9.4.

**1.29** "**Day One Developed Technology**" means (a) [*], and (b) [*].

**1.30** "**Day One Indemnitees**" has the meaning set forth in Section 7.2.

**1.31** "**Day One Therapeutics**" means any or all of Day One Therapeutics, Inc. or Day One Holdings, LLC.

**1.32** "**Development**" means all internal and external research, development, and regulatory activities related to pharmaceutical products, including (a) research, toxicology testing and studies, non- clinical and preclinical testing, studies, and other activities, and Clinical Trials, and (b) preparation, submission, review, and development of data or information for the purpose of submission to a Regulatory Authority to obtain authorization to conduct Clinical Trials and to obtain, support, or maintain Regulatory Approval of a pharmaceutical product and interacting with Regulatory Authorities following receipt of Regulatory Approval in the applicable country or region for such pharmaceutical product regarding the foregoing, but excluding activities directed to Manufacturing, Medical Affairs, or Commercialization. Development will include development and regulatory activities for additional forms, formulations, or indications for a pharmaceutical product after receipt of Regulatory Approval of such product (including label expansion), including Clinical Trials initiated following receipt of Regulatory Approval or any Clinical Trial to be conducted after receipt of Regulatory Approval that was mandated by the applicable Regulatory Authority as a condition of such Regulatory Approval with respect to an approved formulation or indication (such as post-marketing studies, observational studies, implementation and management of registries and analysis thereof, in each case, if required by any Regulatory Authority in any region in the Territory to support or maintain Regulatory Approval for a pharmaceutical product in such region). "**Develop**," "**Developing**," and "**Developed**" will be construed accordingly.

**1.33** "**Disclosing Party**" has the meaning set forth in Section 8.1(a).

**1.34** "**Dispute**" has the meaning set forth in Section 9.6.

**1.35** "**Effective Date**" has the meaning set forth in the Preamble.

**1.36** "**EMA**" means the European Medicines Agency, or any successor agency with similar responsibilities.

**1.37** "**Excluded Assets**" has the meaning set forth in Section 2.3.

**1.38** "**Exploit**" means to Develop, Manufacture, perform or have performed Medical Affairs, Commercialize, or otherwise exploit. "**Exploitation**" and "**Exploiting**" will be construed accordingly.

**1.39** "**FDA**" means the United States Food and Drug Administration, or any successor agency thereto.

**1.40** "**FFDCA**" means the United States Federal Food, Drug and Cosmetic Act, as amended or supplemented from time to time.

**1.41** "**Fully-Diluted Basis**" means, as of a specified date, (a) the number of shares of Common Stock then-outstanding, *plus* (b) the number of shares of Common Stock issuable upon exercise or conversion of then-outstanding convertible securities or warrants, options, or other rights to subscribe for, purchase or acquire from Day One any capital stock of Day One (which will be determined without regard to whether such securities or rights are then vested, exercisable or convertible), *plus* (c) all shares of Common Stock reserved for issuance pursuant to any equity incentive plan of the Day One, and *plus* (d) all shares of Common Stock issuable pursuant to the Series A Purchase Agreement at all closings thereunder, in each case measured on an as-converted to Common Stock basis; *provided* that, for clarity, "other rights to subscribe for, purchase or acquire" will not include (i) preemptive or other rights to participate in new offerings of securities by Day One, (ii) anti-dilution provisions that have not been triggered, and (iii) anti-dilution provisions that would not be triggered by the issuance of equity securities to Takeda pursuant to or in connection with the provisions of this Agreement.

**1.42** "**Fundamental Breaches**" has the meaning set forth in Section 7.4(b)(i).

**1.43** "**Governmental Authority**" means any court, tribunal, arbitrator, agency, commission, department, ministry, official, authority or other instrumentality of any national, state, county, city or other political subdivision.

**1.44** "**Grant Back License**" has the meaning set forth in Section 2.5(a).

**1.45** "**Gross Up Taxes**" has the meaning set forth in Section 3.4.

**1.46** "**ICH**" means International Conference on Harmonization.

**1.47** "**IND**" means, in the United States, an Investigational New Drug Application filed with the FDA as more fully defined in 21 C.F.R. §312.3, and, with respect to every other country in the Territory, the clinical trial notification, clinical trial application or other equivalent application (i.e., a filing that must be made prior to commencing clinical testing of any Product in humans) filed with the applicable Regulatory Authority in such country.

**1.48** "**Indemnified Party**" has the meaning set forth in Section 7.3.

**1.49** "**Indemnifying Party**" has the meaning set forth in Section 7.3.

**1.50** "**Intellectual Property**" means all Patent Rights, rights to inventions, copyrights, design rights, trademarks, Know-How, and all other intellectual property rights (whether registered or unregistered), and all applications and rights to apply for any of the foregoing, anywhere in the world.

**1.51** "**IO Combo Study**" means that certain clinical study under the study ID C28003.

**1.52** "**IRS**" means the Internal Revenue Service.

**1.53** "**JDC**" has the meaning set forth in Section 4.5.

**1.54** "**Know-How**" means any (a) proprietary information or materials, including records, improvements, modifications, techniques, assays, chemical or biological materials, designs, protocols, formulas, data (including physical data, chemical data, toxicology data, animal data, raw data, clinical data, and analytical and quality control data), dosage regimens, control assays, product specifications, marketing, pricing and distribution costs, inventions, algorithms, technology, forecasts, profiles, strategies, plans, results in any form whatsoever, know-how, and trade secrets (in each case, whether or not patentable, copyrightable, or otherwise protectable), and (b) any physical embodiments of any of the foregoing.

**1.55** "**Labeling**" means the healthcare professional information or patient information used in the Territory that is part of an MAA for a Product including the package insert, medication guides, company core safety information ("CCSI"), and company core data sheet ("CCDS").

**1.56** "**Liability**" means any obligation or liability (direct or indirect, matured or unmatured, absolute, accrued, contingent or otherwise), whether or not required by United States generally accepted accounting principles to be reflected in financial statements or disclosed in the notes thereto.

**1.57** "**Licensed Intellectual Property**" means the Licensed Know-How and the Licensed Patents.

**1.58** "**Licensed Know-How**" means the Know-How, other than the Assigned Know-How, that is Controlled by Takeda or its Affiliates (a) on the Effective Date and set forth on Schedule 1.58 or (b) otherwise disclosed in writing by Takeda to Day One during the Term for the purpose of Exploiting the Compound or the Products in the Day One Field in the Territory.

**1.59** "**Licensed Patents**" means (a) all Patent Rights Controlled by Takeda on the Effective Date and set forth on Schedule 1.59 and (b) with respect to any patent set forth on Schedule 1.59, any patent applications from which such patent issued, and with respect to any such patent application (including any provisional application) in any country or international or regional patent authority, the following items, collectively: (i) all divisionals, continuations and continuations-in-part of such patent application; (ii) any patents (including certificates of correction) issuing from such patent application or any patent application described in clause (i); (iii) all patents and patent applications, in any country or international or regional patent authority, based on, corresponding to or claiming the priority date(s) of, or common priority with, such patent application or any of the patents and patent applications described in clauses (i) or (ii); (iv) all rights derived from any of the items described in clauses (i), (ii) or (iii) including any substitutions, extensions (including supplemental protection certificates), registrations, confirmations, reissues, re- examinations and renewals of any of the patents described in clauses (ii) or (iii).

**1.60** "**Losses**" means losses, damages, Liabilities, costs, charges, and expenses (including reasonable attorneys' fees).

**1.61** "**MAA**" means a (a) New Drug Application or supplemental New Drug Application as contemplated by Section 505(b) of the FFDCA, submitted to the FDA pursuant to 21 C.F.R. § 314, including any amendments thereto, or (b) any comparable applications filed in or for countries or jurisdictions outside of the United States to obtain Regulatory Approval to Commercialize a pharmaceutical product in that country or jurisdiction.

**1.62** "**Manufacture**" or "**Manufacturing**" means activities directed to manufacturing, processing, formulating, packaging, labeling, filling, finishing, assembly, quality assurance, quality control, testing, and release, shipping, or storage of any pharmaceutical product (or any components or process steps involving any product or any companion diagnostic), placebo, or comparator agent, as the case may be, including process development, qualification, and validation, scale-up, pre-clinical, clinical, and commercial manufacture and analytic development, product characterization, and stability testing, but excluding activities directed to Development, Commercialization, or Medical Affairs. "**Manufacturing**" and "**Manufactured**" will be construed accordingly.

**1.63** "**Medical Affairs**" means activities conducted by a Party's medical affairs departments (or, if a Party does not have a medical affairs department, the equivalent function thereof), including communications with key opinion leaders, medical education, symposia, advisory boards (to the extent related to medical affairs or clinical guidance), and other medical programs and communications, including educational grants, research grants (including conducting investigator-initiated studies), and charitable donations to the extent related to medical affairs and not to other activities that do not involve the Commercialization of Products and are not conducted by a Party's medical affairs (or equivalent) departments.

**1.64** "**Notifying Party**" has the meaning set forth in Section 4.8(d)(ii).

**1.65** "**Original Agreement**" has the meaning set forth in the recitals.

**1.66** "**Party**" means Day One or Takeda.

**1.67** "**Patent Rights**" means any and all (a) patents, (b) patent applications, including all provisional and non-provisional applications, patent cooperation treaty (PCT) applications, substitutions, continuations, continuations-in-part, divisions and renewals, and all patent rights granted thereon, (c) all patents-of-addition, reissues, re-examinations and extensions or restorations by existing or future extension or restoration mechanisms, including supplementary protection certificates and equivalents thereof, (d) inventor's certificates, letters patent, or (e) any other substantially equivalent form of government issued right substantially similar to any of the foregoing described in subsections (a) through (d) above, anywhere in the world.

**1.68** "**Person**" means any individual, firm, corporation, partnership, limited liability company, trust, business trust, joint venture, Governmental Authority, association or other entity.

**1.69** "**Pharmacovigilance Agreement**" has the meaning set forth in Section 4.9(a).

**1.70** "**Point of Contact**" has the meaning set forth in Section 4.13.

**1.71** "**Product Trademarks**" has the meaning set forth in Section 5.8.

**1.72** "**Products**" means all products incorporating or comprising the Compound in any dosage, form or formulation, including any and all modes of administration.

**1.73** "**Prosecution**" means the filing, preparation, prosecution (including any interferences, reissue proceedings, reexaminations, oppositions and similar proceedings), post-grant reviews, requests for patent term adjustments, and maintenance of Patent Rights. For the avoidance of doubt, Prosecution excludes any applications or requests for Patent Term Extension. When used as a verb, "**Prosecute**" means to engage in Prosecution.

**1.74** "**Raf Target**" means the human Raf protein together with the Raf protein family members Raf-1, A-Raf, B-Raf, and C-Raf.

**1.75** "**Recall**" means removal or correction of a Product following (a) notice or request of any Regulatory Authority or (b) the good faith determination by a Party that an event, incident, or circumstance has occurred that required such a recall of such Product. A Recall does not include a market withdrawal or a stock recovery.

**1.76** "**Receiving Party**" has the meaning set forth in Section 8.1(a).

**1.77** "**Regulatory Approval**" means any and all approvals, licenses, registrations, or authorizations of the relevant Regulatory Authority, including any pricing and/or reimbursement approval or determination necessary for the Development, Manufacture, use, import, transport, or Commercialization of Product in a particular country or jurisdiction.

**1.78** "**Regulatory Authority**" means (a) in the US, the FDA or (b) in any other jurisdiction anywhere in the world, any regulatory body with similar regulatory authority over pharmaceutical products (including without limitation, the EMA).

**1.79** "**Regulatory Submissions**" means any filing, application, or submission with any Regulatory Authority in support of the Development, Manufacture, Commercialization, or other Exploitation of a pharmaceutical product (including to obtain, support, or maintain Regulatory Approval from that Regulatory Authority), and all correspondence or communication with or from the relevant Regulatory Authority, as well as minutes of any material meetings, telephone conferences, or discussions with the relevant Regulatory Authority. Regulatory Submissions include all INDs, MAAs, and other applications for Regulatory Approval and their equivalents.

**1.80** "**Related Party**" means (a) any Person to which Day One grants a sublicense under the rights granted to Day One under Section 2.4(a) or (b) any other Person to which Day One grants a license under any of the Assigned Technology. For the purposes of this Agreement, Takeda will not be considered a Related Party of Day One.

**1.81** "**Related Party Developed Technology**" means all Know-How developed or invented by or on behalf of a Related Party in the performance of activities under this Agreement or using the Assigned Technology or Licensed Intellectual Property, and that is related to the Products or the Compound in the Day One Field, and all Patent Rights with a priority date after the Effective Date that Cover any such Know- How that, in each case, is necessary or useful to Exploit the Takeda Products in the Takeda Field in the Territory, including any such Know-How that comprises any improvement to the Compound as an active product ingredient, but, in each case, excluding any such Know-How related to, or Patent Rights Covering, [*].

**1.82** "**Review Material**" has the meaning set forth in Section 8.6.

**1.83** "**SEC**" means the U.S. Securities and Exchange Commission, or any successor thereto.

**1.84** "**Series A Preferred Stock**" means the Series A Preferred Stock of Day One, $0.0001 par value per share.

**1.85** "**Series A Preferred Stock Transaction Agreements**" has the meaning set forth in Section 3.2.

**1.86** "**Series A Purchase Agreement**" means that certain Series A Preferred Stock Purchase Agreement, dated as of the Effective Date, by and between Day One and the purchasers of Series A Preferred Stock party thereto.

**1.87** "**Serious Adverse Event**" or "**SAE**" has the meaning set forth in 21 C.F.R. § 312.32, and generally means any Adverse Event that (a) results in death, (b) is life-threatening, (c) requires inpatient hospitalization or prolongation of existing hospitalization, (d) results in persistent or significant disability or incapacity, (e) is a congenital anomaly or birth defect, or (f) based upon appropriate medical judgment is considered an important medical event that may jeopardize the patient or subject and may require medical or surgical intervention to prevent one of the outcomes listed in this definition.

**1.88** "**Stock Issuance Agreement**" means the agreement attached hereto as **Exhibit A**.

**1.89 "Sunesis**" has the meaning set forth in the recitals.

**1.90** "**Sunesis License**" has the meaning set forth in the recitals.

**1.91** "**TAK-580**" means the pan-RAF kinase inhibitor previously known as BIIB024 and MLN 2480.

**1.92** "**TAK-580 IND**" means the IND for the Product, which is number 108,340.

**1.93** "**Takeda-Biogen Agreement**" has the meaning set forth in the recitals.

**1.94** "**Takeda Developed Technology**" means (a) [*], and (b) [*]. For clarity, the Takeda Developed Technology excludes the Assigned Technology and the Licensed Patents.

**1.95** "**Takeda Development Notice**" has the meaning set forth in Section 4.5(a).

**1.96** "**Takeda Field**" means the prevention, diagnosis, or treatment of diseases or conditions that are set forth on the attached Schedule 1.96 but expressly excluding the prevention, diagnosis, or treatment of [*].

**1.97** "**Takeda Indemnitees**" has the meaning set forth in Section 7.1.

**1.98** "**Takeda Licensee Developed Technology**" means [*].

**1.99** "**Takeda Product**" means any Product Developed or Commercialized by or on behalf of Takeda, its Affiliates or any of Takeda or its Affiliates respective licensees or sublicensees under this Agreement for use in the Takeda Field.

**1.100** "**Tax**" means (a) all federal, provincial, territorial, state, municipal, local, foreign or other taxes, imposts, rates, levies, assessments and other charges in the nature of a tax, including all income, excise, franchise, gains, capital, real property, goods and services, transfer, value added, gross receipts, windfall profits, severance, ad valorem, personal property, production, sales, use, license, stamp, documentary stamp, mortgage recording, employment, payroll, social security, unemployment, disability,

escheat and unclaimed property, estimated or withholding taxes, and all customs and import duties, in each case, whether disputed or not; (b) interest, penalties, fines, additions to tax, or additional amounts imposed by any Governmental Authority in connection with (i) any item described in clause (a) or (ii) the failure to comply with any requirement imposed with respect to any Tax Returns, (c) any Liability for the payment of any amounts of the type described in clause (a) or clause (b) as a result of being or having been a member of an affiliated, consolidated, combined or unitary group; and (d) any Liability for the payment of any amounts as a result of being party to any tax sharing agreement or arrangement or as a result of any express or implied obligation to indemnify any other person with respect to the payment of any amounts of the type described in clause (a), (b), or (c).

**1.101** "**Territory**" means all of the countries of the world, and their territories and possessions.

**1.102** "**Third Party**" means any Person other than a Party or an Affiliate of a Party.

**1.103** "**Third Party Action**" has the meaning set forth in Section 5.5(a).

**1.104** "**Third Party Claim**" has the meaning set forth in Section 7.1.

**1.105** "**Third Party Infringement**" has the meaning set forth in Section 5.4(b).

**1.106** "**Third Party IP Agreement**" means any agreement pursuant to which Day One licenses or otherwise acquires rights under any Know-How or Patent Rights controlled by a Third Party that is necessary or useful to Exploit any Product in the Day One Field in the Territory, other than the Sunesis License.

**1.107** "**Third Party Obligations**" has the meaning set forth in Section 6.2(a).

**1.108** "**Trademark**" means any trademark, trade name, service mark, service name, brand, domain name, trade dress, logo, slogan, or other indicia of origin or ownership, including the goodwill and activities associated with each of the foregoing.

**1.109** "**Transfer Plan**" has the meaning set forth in Section 4.1.

**1.110** "**Up-Front Payment**" has the meaning set forth in Section 3.1.

**1.111** "**Withholding Tax Action**" means an assignment of all or any portion of this Agreement by Day One, Change of Control of Day One, change of jurisdiction of payments by Day One, or change of domicile by Day One that in and of itself without regard to any other circumstance causes a withholding tax obligation to arise or which increases a withholding tax obligation with respect to an amount payable to Takeda pursuant to this Agreement, except to the extent a Change of Control of Day One or change of domicile of Day One is caused by the direct or indirect ownership of Day One by Takeda or any of Takeda's direct or indirect owners or Affiliates.

## ARTICLE 2
## TRANSFER OF ASSETS; GRANT OF RIGHTS

**2.1 Transfer of Assets**. Subject to the terms and conditions hereof, upon the Effective Date, Takeda hereby grants, sells, transfers, conveys, assigns, and delivers to Day One, and Day One agrees to purchase and receive from Takeda all of Takeda's and its Affiliates' rights, title, and interest in and to the following assets (the assets set forth in the following clauses (a) – (e), collectively, the "**Acquired Assets**"):

(a) the Assigned Patent Rights;

(b) the Assigned Know-How;

(c) the Assigned Agreements;

(d) the Assigned Regulatory Submissions; and

(e) inventory of the Compound set forth on Schedule 2.1(e) (the "**Assigned Inventory**").

Upon the Effective Date, Takeda will execute and deliver to Day One the Bill of Sale assigning the Acquired Assets to Day One, substantially in the form attached hereto as Schedule 2.1.

**2.2 Further Assurances**. After the Effective Date, each Party will promptly take such actions as may be reasonably necessary to effect the sale, conveyance, assignment, and transfer of all Acquired Assets to Day One in a manner consistent with the assignment and delivery terms of this Agreement, and any other document or instrument contemplated hereby or thereby. Without limiting the generality of the foregoing, each Party will, from time to time (but not to exceed the date that is [*] after the Effective Date), take such actions as may be reasonably necessary to perfect the transfer of the Assigned Patent Rights to Day One, including the execution of (a) any documents needing inventor signature, a patent assignment agreement substantially in the form attached hereto as Schedule 2.2, and (b) any other patent assignments that may be reasonably required in any jurisdiction in the Territory in connection with the transfer and assignment to Day One of the Assigned Patent Rights, all in forms reasonably acceptable to Takeda and Day One. Any fees associated with the recording and other filing of assignment documents will be the sole and exclusive responsibility of Day One.

**2.3 Excluded Assets**. Except as expressly set forth in the licenses granted under Section 2.4, Day One is not acquiring any rights, title, or interests in, to or under the Licensed Intellectual Property (except as set forth in Section 5.1) or acquiring any assets, properties or rights, in each case, that are not Acquired Assets (collectively, the "**Excluded Assets**").

**2.4 License Grant to Day One**.

(a) **Exploitation License**. Subject to the terms and conditions of this Agreement, Takeda hereby grants and agrees to grant to Day One an irrevocable, perpetual license (or sublicense to the extent applicable), with the right to grant sublicenses through multiple tiers as set forth in Section 2.4(b), in the Territory under the Licensed Intellectual Property and the Takeda Developed Technology to Exploit the Compound and the Products in the Day One Field in the Territory. The foregoing license will be exclusive with respect to the Licensed Intellectual Property and non-exclusive with respect to the Takeda Developed Technology. Day One will not, and will cause its Related Parties not to, Exploit the Compound or any Product outside of the Day One Field or Exploit any Takeda Product in the Territory for so long as the Grant Back License remains in effect.

(b) **(Sub)licenses**. Day One may grant to Day One Therapeutics or to any Third Party any sublicenses of the rights granted under Section 2.4(a) or any licenses or other rights to Exploit any Product, in each case, without Takeda's prior written consent. Each sublicense of the rights granted under Section 2.4(a) or license or other grant of rights to any other Related Party to Exploit any Product, in each case, will (i) refer to and be consistent with the terms and conditions of this Agreement, (ii) will require assignment or sublicensable license (through multiple tiers) to Day One of rights to all Related Party Developed Technology, which rights will be licensed or sublicensed, and will be sufficient to so license or

sublicense, to Takeda pursuant to the Grant Back License as part of the Day One Developed Technology if such Related Party Developed Technology is Controlled by Day One (as provided in the proviso to the definition of Control), and (iii) contain confidentiality terms and conditions at least as restrictive as those set forth in this Agreement. Day One will remain responsible for the failure of its Related Parties to comply with the relevant obligations under this Agreement. Unless otherwise agreed in writing by Takeda and prior to the first Change of Control of Day One that occurs after the Effective Date, Day One may not grant to any Affiliate (other than Day One Therapeutics) any sublicense of the rights granted under Section 2.4(a) or any licenses or other rights to Exploit any Product and may not engage any Affiliate (other than Day One Therapeutics) to exercise any of Day One's rights or perform any of Day One's obligations, in each case, under this Agreement or otherwise with respect to the Exploitation of any Compound or any Product.

(c) **Assays**. Takeda hereby grants and agrees to grant to Day One a fully-paid, royalty- free, worldwide, non-exclusive, perpetual, irrevocable and sublicenseable through multiple tiers license under Takeda's rights to the assays described in Schedule 2.4(c) to use, import and Manufacture (and have Manufactured) such assays for purposes of performing its obligations and exercising its rights this Agreement and the Sunesis License.

(d) **Covenant Not to Sue**. Subject to Day One's compliance with the terms and conditions of this Agreement, Takeda will not, and will cause its Affiliates to not, anywhere in the Territory, assert any legal or equitable cause of action, suit, or claim against Day One, its Affiliates, or any of its Related Parties asserting infringement of any Patent Rights Controlled by Takeda or its Affiliates as a result of Day One's, its Affiliates, or its Related Parties' Exploitation of the Compound or the Products.

**2.5 License Grants to Takeda**.

(a) **Takeda Field**. Subject to the terms and conditions of this Agreement, Day One hereby grants and agrees to grant to Takeda and its Affiliates an irrevocable (subject to Section 2.6), perpetual (subject to Section 2.6), license (or sublicense to the extent applicable), with the right to grant sublicenses through multiple tiers, in the Territory under the Assigned Technology and the Day One Developed Technology, solely to Exploit the Takeda Products in the Takeda Field in the Territory (the "**Grant Back License**"). The Grant Back License will be exclusive with respect to the Assigned Technology and the Licensed Intellectual Property and non-exclusive with respect to the Day One Developed Technology. Takeda will not, and will cause its Affiliates and sublicensees not to, Exploit the Compound or the Products outside of the Takeda Field in the Territory or any Product that is not a Takeda Product in the Territory. Each sublicense under the Grant Back License will (i) refer to and be consistent with the terms and conditions of this Agreement, (ii) will require assignment or sublicensable license (through multiple tiers) to Takeda of rights to all Takeda Licensee Developed Technology, which rights will be licensed or sublicensed, and will be sufficient to so license or sublicense, to Day One pursuant to Section 2.4(a) as part of the Takeda Developed Technology if such Takeda Licensee Developed Technology is Controlled by Takeda (as provided in the proviso to the definition of Control), and (iii) contain confidentiality terms and conditions at least as restrictive as those set forth in this Agreement. Takeda will remain responsible for the failure of its Affiliates and sublicensees hereunder to comply with the relevant obligations under this Agreement.

(b) **Internal Research**. Subject to the terms and conditions of this Agreement, Day One hereby grants and agrees to grant to Takeda and its Affiliates a fully paid-up, royalty free, perpetual, irrevocable, non-exclusive license to practice under the Assigned Technology solely for the purpose of conducting Takeda's and its Affiliates' internal, non-clinical research activities in any field, but excluding clinical Development or Commercialization of the Compound or any research activities undertaken specifically in support of clinical Development or Commercialization of the Compound.

**2.6 Termination of License to Takeda**.

(a) If Takeda has not dosed at least one patient with a Takeda Product in a Clinical Trial in the Takeda Field on or before the date that is [*] after the Effective Date, then the Grant Back License will automatically terminate.

(b) If Takeda has dosed at least one patient with a Takeda Product in a Clinical Trial in the Takeda Field on or before the date that is [*] after the Effective Date, and if, prior to the first commercial sale of any Takeda Product by or on behalf of Takeda, its Affiliates, licensees or sublicensees, Takeda, its Affiliates or licenses or sublicensees do not conduct any Development activities with respect to at least one Takeda Product for a continuous period of longer than [*], and such suspension of activity is not: (i) by written agreement of the Parties, or (ii) a result of Takeda's reasonable response to guidance from or action by a Regulatory Authority in the Territory (such as a clinical hold, or a Recall or withdrawal), then Day One may, at its election, terminate the Grant Back License upon [*] prior written notice to Takeda.

**2.7 No Implied Licenses, Rights or Covenants; Intent of the Parties**. Except as expressly set forth in this Agreement, neither Party grants to the other Party any licenses, rights, or covenants in, to, or under any intellectual property rights owned or Controlled by such Party and each Party expressly retains all rights under such intellectual property owned or Controlled by such Party not licensed to the other Party hereunder, including, in the case of Takeda, the grant to Day One of a license to practice the Licensed Know-How to Exploit any compounds or products other than the Products and the Compound. It is the intent of the Parties that neither the entry into this Agreement, nor the terms set forth herein, will cause Takeda or any of its Affiliates to be in breach under any agreement with any Third Party in existence as of the Effective Date, including Sunesis Pharmaceuticals, Inc. and Biogen Idec MA Inc.

**2.8 Negative Covenants**.

(a) Day One will not, and will cause its Affiliates and direct its Related Parties not to, practice any Licensed Intellectual Property for any purpose other than as expressly authorized in this Agreement.

(b) Takeda will not, and will cause its Affiliates and direct its licensees and sublicensees not to, practice any intellectual property rights Controlled by Day One or its Affiliates (including the Assigned Technology) for any purpose other than as expressly authorized in this Agreement.

(c) If Takeda identifies any compounds binding the Raf Target, other than the Compound, that it or any of its Affiliates owns solely pursuant to, or as a result of its activities under, the Takeda-Biogen Agreement or the Sunesis License (each, an "**Excluded Raf Compound**"), then Takeda will not, and will cause its Affiliates and direct its licensees and sublicensees not to, Exploit any Excluded Raf Compound or any pharmaceutical product containing or comprising any Excluded Compound for any purpose.

**2.9 Agreements Relating to Transfer of Acquired Assets**. Takeda and Day One agree that all Intellectual Property included in the Acquired Assets will be transmitted or otherwise provided to Day One in accordance with the Transfer Plan.

## ARTICLE 3
## COMPENSATION

**3.1 Up-Front Payment**. As partial consideration for the licenses granted and assets transferred pursuant to this Agreement, within thirty (30) days following the Effective Date, Day One will pay to Takeda by certified bank check or wire transfer to an account designated by Takeda in U.S. Dollars the amount of [*] (the "**Up-Front Payment**").

**3.2 Series A Preferred Stock Issuance**. Subject to and upon the terms and conditions of this Agreement, and as partial consideration for the license grants and transfers of assets contemplated by this Agreement, on the Effective Date Day One will issue to Takeda, and Takeda will acquire from Day One 9,857,143 duly authorized and validly issued shares of Series A Preferred Stock which is equal to [*] of the issued and outstanding capital stock of Day One on a Fully-Diluted Basis as of immediately following the consummation of the transactions contemplated by the Series A Purchase Agreement and the Stock Issuance Agreement. Takeda will, as a condition to such issuance become a party the Stock Issuance Agreement, voting agreement, right of first refusal and co-sale agreement, and investors' rights agreement (collectively, with the Series A Purchase Agreement, such agreements, the "**Series A Preferred Stock Transaction Agreements**") with Day One and/or the other purchasers of Series A Preferred Stock in connection with such financing on substantially the same terms and conditions as such other purchasers. Immediately following the closing of the issuance of Series A Preferred Stock to Takeda in accordance with this Section 3.2 and the closing pursuant to the Series A Purchase Agreement, the Series A Preferred Stock acquired by Takeda hereunder will represent no less than [*] of Day One's outstanding capital stock on a Fully-Diluted Basis, after giving effect to the transactions contemplated by the Stock Issuance Agreement and the Series A Purchase Agreement.

**3.3 Currency**. All payments to Takeda hereunder will be made by deposit of USD in the requisite amount to such bank account as Takeda may from time to time designate by written notice to Day One. The Parties may vary the method of payment set forth herein at any time upon written agreement, and any change will be consistent with the Applicable Law at the place of payment or remittance.

**3.4 Tax Withholding**. If Day One or any of its agents is required by Applicable Law to deduct or withhold Taxes from any payment to Takeda under this Agreement, then Day One will make such deductions or withholdings as so required, will pay over such amounts to the proper Governmental Authority on Takeda's behalf in a timely manner, and will provide Takeda with written evidence of payment of such amounts no later than [*] following such payment. If any such payment is payable (in whole or in part) in consideration other than cash and if the cash portion of any such payment is insufficient to satisfy all required Tax withholding obligations, then Day One shall retain an amount of the non-cash consideration otherwise payable equal in value to the amount required to satisfy any applicable withholding Taxes (as reasonably determined by Day One). The applicable payment under this Agreement will be decreased by such amounts; provided, however, if the Tax withholding is required as a result of a Withholding Tax Action, then Day One will increase the amount of the payment due to Takeda such that the net amount actually received by Takeda is equal to the payment due after taking into account the withholding of Tax with respect to such payment and the withholding of Tax with respect to any additional payment required to be made pursuant to this Section 3.4 (such Taxes for which additional amounts are required to be paid by Day One, the "**Gross Up Taxes**"). The Parties will reasonably cooperate with each other in order to reduce or eliminate applicable withholding Tax, including by providing such forms the Parties are legally able to complete and file to qualify for the benefits of a bilateral income tax treaty. Notwithstanding the foregoing, no Gross Up Tax is payable to the extent Takeda determines in good faith that it would receive a credit, refund, or other Tax attribute that would offset the economic burden of applicable withholding Taxes.

## ARTICLE 4
## EXPLOITATION OF THE PRODUCTS

**4.1 Know-How**. Takeda will provide to Day One copies of the Assigned Know-How and Licensed Know-How in accordance with the transfer plan set forth on Schedule 4.1 (the "**Transfer Plan**").

Following the completion of the activities set forth in the Transfer Plan, during the [*] period following the Effective Date, Takeda will reasonably consider any requests from Day One to provide any additional Know-How not included in the Transfer Plan and that is reasonably necessary for the continued Development of the Compound or any Product, to the extent such Know-How remains within Takeda's or any of its Affiliate's possession and Control at the time of such request. Any such Know-How provided by Takeda (following agreement by each Party) will be included as Licensed Know-How and licensed to Day One pursuant to Section 2.4(a).

**4.2 Transferred Inventory**. Takeda will transfer to Day One the Assigned Inventory in accordance with the Transfer Plan. Except as set forth in Section 4.7, Takeda will have no further obligation to make any further physical inventory of the Compound or any Product available to Day One. Except as set forth in the quality materials provided with the Assigned Inventory, the Assigned Inventory transferred to Day One by Takeda under this Section 4.2 is transferred on an "as is" basis, and notwithstanding any provision to the contrary set forth in this Agreement Takeda will have no liability for any losses, claims, or damages arising from or related to Day One's use of such Assigned Inventory.

**4.3 Access to Personnel**. Day One will have access, as set forth in the Transfer Plan and reasonably requested by Day One, [*], to Takeda and its Affiliates employees at reasonable times during normal business hours and upon reasonable prior notice for discussion related to the use of the Assigned Technology and the Licensed Intellectual Property in the Day One Field and for reasonable assistance with respect to the transfer of the Assigned Technology and Licensed Know-How. If Takeda agrees to provide to Day One any additional assistance beyond that which is set forth in the Transfer Plan, then Day One will reimburse any costs and expenses incurred by Takeda or any of its Affiliates in providing such access to personnel, support, and assistance beyond that set forth in the Transfer Plan.

**4.4 Development Plans**.

(a) Day One will have sole control over and decision-making authority with respect to Development of the Compound and the Products, other than the Development and Manufacture of Takeda Products for the use in the Takeda Field in the Territory and the Compound for use in such Takeda Products, subject to Section 9.4. Day One will establish a written development plan for each Product that contemplates all Clinical Trials and other material Development activities to be performed by or on behalf of Day One with respect to such Product in the Day One Field, including all such Development activities required to seek and obtain Regulatory Approval for such Product in the Day One Field throughout the Territory (for each Product, a "**Day One Development Plan**"). Day One will update each Day One Development Plan at least annually no later than [*] of each Calendar Year for so long as Day One is undertaking material Development efforts with respect to such Product, and otherwise as frequently as may be required during such period. Day One will provide each initial Day One Development Plan and update thereto to Takeda as soon as reasonably practicable following the finalization thereof.

(b) Subject to Section 9.4, Takeda will have sole control over and decision-making authority with respect to the Development and Manufacture of Takeda Products for the use in the Takeda Field in the Territory and the Compound for use in such Takeda Products. Following delivery of the Takeda Development Notice, Takeda will establish a written development plan for each Takeda Product that contemplates all Clinical Trials and other material Development activities to be performed by or on behalf of Takeda with respect to such Takeda Product in the Takeda Field, including all such Development activities required to seek and obtain Regulatory Approval for such Takeda Product in the Takeda Field throughout the Territory (for each Takeda Product, a "**Takeda Development Plan**"). Takeda will update each Takeda Development Plan at least annually no later than [*] of each Calendar Year for so long as Takeda is undertaking material Development efforts with respect to such Takeda Product, and otherwise as frequently as may be required during such period. Takeda will provide each initial Takeda Development Plan and update thereto to Day One as soon as reasonably practicable following the finalization thereof.

**4.5 Joint Development Committee**.

(a) **Formation and Purpose**. Promptly following Takeda's written notice to Day One that Takeda or its Affiliates intend to Develop the Takeda Products in the Takeda Field (the "**Takeda Development Notice**"), the Parties will establish a Joint Development Committee ("**JDC**"). The purpose of the JDC will be to share information related to each Party's Development of the Compound and the applicable Products.

(b) **Membership**. Each Party shall designate three representatives to serve on the JDC, each of whom will have the appropriate experience and expertise based on the stage of Development of the Products to perform its responsibilities on the JDC. The Parties may elect to vary the number of representatives from time to time; *provided* that, unless otherwise agreed by the Parties in writing, each Party shall have the right to designate an equal number of representatives from each Party to serve on the JDC. Either Party may designate substitutes for its JDC representatives if one or more of such Party's designated representatives is unable to be present at a meeting. From time to time each Party may replace its JDC representatives by written notice to the other Party specifying the prior representative(s) and their replacement(s).

(c) **Meetings**. For so long as Takeda is undertaking material Development efforts with respect to any Takeda Product, unless otherwise agreed by the Parties, the JDC shall meet at least [*] per [*]. Additional meetings of the JDC may be held with the consent of each Party (such consent not to be unreasonably withheld, delayed or conditioned). At each meeting of the JDC, the Parties' representatives will review and discuss each Day One Development Plan and Takeda Development Plan and the material Development activities conducted by each Party with respect to the Development of the Products or Takeda Products, as applicable, in their respective fields since the prior meeting of the JDC. The JDC will have no decision-making power, but Day One will consider in good faith any recommendations from the JDC regarding the Development of the Products in the Day One Field and Takeda will consider in good faith any recommendations from the JDC regarding the Development of the Takeda Products in the Takeda Field.

(d) **Non-Member Participation**. Additional representatives of each Party who are not members of the JDC having relevant experience may from time to time be invited to participate in a JDC meeting. Non-member participants who are not employees of a Party or its Affiliates shall only be allowed to attend if: (i) the other Party's representatives have consented to the attendance (such consent not to be unreasonably withheld, delayed or conditioned); and (ii) such non-member participant is subject to confidentiality and non-use obligations at least as restrictive as those set forth in this Agreement.

(e) **Disbandment of the JDC**. The JDC will be dissolved effective upon the completion of all Development activities of each Party in their respective fields, or upon termination of the Grant Back License pursuant to Section 2.6.

**4.6 Commercialization Activities**. Subject to Section 9.4, Day One will have sole control over and decision-making authority with respect to the Commercialization of Products in the Territory, other than the Commercialization of Takeda Products in the Takeda Field in the Territory, and Takeda shall have sole control over and decision-making authority with respect to the Commercialization of Takeda Products in the Takeda Field in the Territory, in each case, including: (a) developing and executing a commercial launch and pre-launch plan; (b) marketing and promotion; (c) booking sales and distribution and performance of related services; (d) handling all aspects of order processing, invoicing and collection, inventory and receivables; (e) publications; (f) providing customer support, including handling medical

queries, and performing other related functions; (g) conforming its practices and procedures in all material respects to Applicable Law relating to the marketing, detailing and promotion of Products in such Party's field in the Territory; and (f) reviewing and approving all promotional materials for compliance with Applicable Law, including submission, where appropriate, to the applicable Regulatory Authority. Takeda and its Affiliates and sublicensees, will use reasonable efforts to ensure that each Takeda Product Commercialized by or on behalf of Takeda is in a different form or formulation from any Product Commercialized by or on behalf of Day One or its Affiliates or Related Parties.

**4.7 Manufacturing**.

(a) From and after the Effective Date, Day One will Manufacture (either itself or through one or more of its Affiliates or Third Party contract manufacturers) and have sole control over and decision-making authority with respect to the Manufacturing and distribution of all clinical and commercial supplies of the Compound and the Products in the Territory, other than the Manufacturing and distribution of all clinical and commercial supplies of the Takeda Products for use in the Takeda Field and the Compound for the use in the Manufacture of such Takeda Products, subject to Section 9.4. Takeda will specify in the Takeda Development Notice whether (a) Takeda desires Day One to Manufacture drug substance for use in the Manufacture of Takeda Products for use in the Takeda Field, in which case, Day One will negotiate in good faith an agreement with Takeda on customary and commercially reasonable terms providing for the supply to Takeda of drug substance for use in the Manufacture of Takeda Products in the Takeda Field, or (b) Takeda will itself Manufacture (or have Manufactured) Takeda Products for use in the Takeda Field and the Compound for use in the Manufacture of Takeda Products in the Takeda Field.

(b) From and after the Effective Date, Takeda will continue to supply and distribute Product as necessary to maintain and support those clinical trials existing as of the Effective Date and identified in the Transfer Plan, in accordance with and on the timelines set forth therein.

(c) Takeda shall provide Day One access to Takeda's employees and consultants, and those of its contractors (including its contract manufacturers), in each case, as set forth in the Transfer Plan, to assist in technology transfer to Day One or its contract manufacturer the Assigned Know-How and Licensed Know-How that is useful or necessary to Manufacture the Compound or the Products. Such assistance shall be provided remotely. Following the completion of the activities set forth in the Transfer Plan, during the [*] period following the Effective Date, Takeda will reasonably consider any requests from Day One to provide any additional Know-How not included in the Transfer Plan and that is reasonably necessary for the Manufacture of the Compound or any Product, to the extent such Know-How remains within Takeda's possession and Control at the time of such request. Any such Know-How provided by Takeda will be included as Licensed Know-How and licensed to Day One pursuant to Section 2.4(a).

**4.8 Regulatory Matters**.

(a) Transfer of Regulatory Submissions and Other Data.

(i) **TAK-580 IND**. Takeda will transfer to Day One copies (in electronic or other format) of the documents comprising the TAK-580 IND and all other Assigned Regulatory Submissions in accordance with the Transfer Plan. No later than [*] after Takeda's receipt of written notice from Day One requesting the transfer of sponsorship of the TAK-580 IND to Day One, and in any event within [*] after the Effective Date, Takeda will submit to the FDA written notice of the transfer of sponsorship of the TAK-580 IND to Day One.

(ii) **Interim Responsibility**. Until the transfer of sponsorship of the TAK- 580 IND to Day One is effective, Takeda shall be solely responsible for maintaining the TAK-580 IND and

Takeda shall have responsibility for all communications with the FDA and all other Regulatory Authorities relating to the Compound and the Products, and Takeda will consult with Day One regarding all such communications and shall promptly provide Day One with copies of all communications to or from any Regulatory Authority with respect to the Compound or any Product, including the Manufacture thereof; *provided* that for so long as Takeda remains responsible for the TAK-580 IND, Takeda shall be responsible for preparing all Regulatory Submissions that are due for submission to any Regulatory Authority within such period in accordance with the Transfer Plan. Takeda shall promptly provide Day One with copies of any communications or contacts it sends to or receives from any other Governmental Authority concerning the Compound or any Product. Upon the transfer of sponsorship of the TAK-580 IND, Day One shall assume responsibility for maintaining the TAK-580 IND and for all communications with the FDA and all other Regulatory Authorities relating to the Compound and the Products, subject to Takeda's rights under Section 4.8(c).

(iii) **Costs and Cooperation**. Day One will bear all Third Party expenses in connection with the transfer and assignment of all Assigned Regulatory Submissions. Subject to the terms and conditions of this Agreement, upon Day One's written request, each Party will execute and deliver, or will cause to be executed and delivered, to the other Party such endorsements, assignments, and other documents as may be reasonably necessary to assign, convey, transfer, and deliver to Day One all of Takeda's rights, title, and interests in and to the Assigned Regulatory Submissions, including submitting to each applicable Regulatory Authority a letter or other necessary documentation (in form and substance satisfactory to Day One), with copy to Day One, notifying such Regulatory Authority of the transfer of ownership of each TAK-580 IND assigned to Day One pursuant to Section 4.8(a)(i). Each Party will provide to the other Party a copy of their respective letters of transfer no later than [*] following submission thereof. Following the completion of the activities set forth in the Transfer Plan, during the [*] period following the Effective Date, Takeda will reasonably consider any requests from Day One to transfer, convey, assign, and deliver any Regulatory Submission that (a) is related solely to one or more Products or the Compound and not to any other product that is Controlled by Takeda or any of its Affiliates, (b) remains in Takeda's possession and Control, and (c) is reasonably necessary for the continued Development or Regulatory Approval of the Compound or any Product, to the extent such Regulatory Submission remains within Takeda's or any of its Affiliate's possession and Control at the time of such request. Any such Regulatory Submission provided by Takeda (following agreement by each Party) will be included in the Assigned Regulatory Submissions.

(b) **Day One Responsibilities**. Subject to Applicable Law and this Section 4.8(b), Day One will, at its sole expense, oversee, monitor, and manage all regulatory interactions, communications, and filings with, and submissions to, Regulatory Authorities with respect to the Products and the Compound in the Day One Field in the Territory; *provided* that Day One will provide Takeda with a copy of all proposed material Regulatory Submissions filed with or submitted to any Regulatory Authority for Takeda's review and comment sufficiently in advance of Day One's filing or submission thereof, and Day One will reasonably consider in good faith incorporating comments received from Takeda into such Regulatory Submissions, subject to Section 9.4. Subject to Section 4.11, Day One will have final decision making authority regarding all regulatory activities, including the Labeling strategy and the content of submissions with respect to the Compound and all Products, subject to the terms and conditions of this Agreement, other than the Takeda Products and the Compound for the use in the Manufacture of Takeda Products in the Takeda Field.

(c) **Takeda Responsibilities**. Subject to Applicable Law, Section 9.4 and this Section 4.8(c), Takeda will, at its sole expense, oversee, monitor, and manage all regulatory interactions, communications, and filings with, and submissions to, Regulatory Authorities with respect to the Takeda Products and the Compound for use in the Manufacture of Takeda Products in the Takeda Field in the Territory; *provided that* Takeda will provide Day One with a copy of all proposed material Regulatory

Submissions filed with or submitted to any Regulatory Authority for Day One's review and comment sufficiently in advance of Takeda's filing or submission thereof, and Takeda will reasonably consider in good faith incorporating comments received from Day One into such Regulatory Submissions. Subject to Section 4.11 and Section 9.4, Takeda will have final decision making authority regarding all regulatory activities, including the Labeling strategy and the content of submissions with respect to the Takeda Products and the Compound for the use in the Manufacture of Takeda Products in the Takeda Field, subject to the terms and conditions of this Agreement. Notwithstanding any provision to the contrary set forth in this Agreement, Takeda shall have sole control over and decision making authority with respect to the IO Combo Study and any Regulatory Submissions relating thereto, *provided* that Takeda will provide to Day One a copy of the final clinical study report for the IO Combo Study, which report Takeda may redact to the extent not related to TAK-580.

(d) **Cooperation, Meetings, and Sharing Final Materials**.

(i) **Ongoing Cooperation**. The Parties will cooperate with each other to achieve the regulatory objectives contemplated herein in a timely, accurate, and responsive manner, including using reasonable efforts to coordinate the regulatory strategy in the Day One Field and Takeda Field such that it is consistent with the overall objective of facilitating Regulatory Approvals of one or more Products in the Day One Field and one or more Takeda Products in the Takeda Field in the Territory. Each Party will assist the other Party, as is reasonably necessary, in order for such Party to obtain and maintain each applicable IND and MAA for the Compound and the Products for which such Party bears responsibility under this Agreement, including in connection with the preparation and filing of such Party's Regulatory Submissions. Each Party will assist the other Party as reasonably requested in connection with chemistry, manufacturing, and controls data and the preparation and filing of Regulatory Submissions related to the Manufacture of the Compound and the Products in the Territory, at the requesting Party's expense (without limiting Takeda's obligations under Sections 4.1, 4.3, or 4.7(c)). Upon a Party's reasonable request, the other Party will provide or otherwise make available to the requesting Party relevant internal regulatory documents, such as notes and preparation materials, and any materials documenting any clarifications (whether orally or otherwise) regarding any Regulatory Submissions transferred to the requesting Party from the other Party hereunder or with respect to which the requesting Party has a right of reference, at the requesting Party's expense (without limiting Takeda's obligations under Sections 4.1, 4.3, or 4.7(c)).

(ii) **Meetings**. Each Party (the "**Notifying Party**") will promptly notify the other Party of any request made by or on behalf of such Notifying Party for a meeting or substantive telephone conference call with a Regulatory Authority with respect to the Compound or any Product. Upon such other Party's written request, the Notifying Party will request that the Regulatory Authority permit at least one (1) employee or regulatory consultant (who is bound by written confidentiality terms and conditions at least as restrictive as those set forth in this Agreement) from such other Party with relevant regulatory experience to observe and participate in any such meeting or conference call; *provided* that Day One's right to observe and participate in such meetings or calls where Takeda is the Notifying Party will be limited to activities related to the Day One Field, and Takeda's right to observe and participate in such meetings or calls where Day One is the Notifying Party will be limited to activities related to the Takeda Field. To the extent permitted by such Regulatory Authority and Applicable Law, such other Party will have the right to observe and, as applicable, participate in any such meeting or conference call. The foregoing rights and obligations will apply with respect to meetings or conferences initiated by the Notifying Party or by a Regulatory Authority. The Notifying Party will promptly furnish the other Party with copies of all substantive contact reports concerning substantive conversations or minutes from any substantive meetings with a Regulatory Authority with respect to any Product.

(iii) **Sharing of Regulatory Submissions and Approvals**. Each Party will keep the other Party reasonably informed regarding the status and progress of material Regulatory Submissions with respect to the Products in such Party's field, including (i) providing the other Party with a copy of all written correspondence from a Regulatory Authority involving a Regulatory Submission for any Product; (ii) notifying the other Party of major topic made by oral correspondence from a Regulatory Authority involving a Regulatory Submission; (iii) providing the other Party with a copy of each Regulatory Submission to be submitted to the FDA or EMA in advance of submission to the relevant Regulatory Authority; (iv) providing the other Party with a copy of all final Regulatory Submissions promptly after submission to the relevant Regulatory Authority; and (v) promptly informing the other Party regarding the receipt or denial of Regulatory Approval for any Product obtained or denied; *provided*, *however*, that in all circumstances, each Party will inform the other Party of such event prior to its public disclosure.

(iv) Each Party's rights and obligations under this Section 4.8(d) are subject to Section 9.4.

(e) **Day One's Right of Reference**. Subject to the terms and conditions of this Agreement and without expanding any of the rights granted to Day One under Section 2.4, Takeda hereby grants to Day One (or its Affiliates or its Related Parties) access to, and a right of reference with respect to, any Regulatory Submissions and corresponding documentation to the extent related to the Product in the Day One Field and Controlled by Takeda, solely for the purposes of Exploiting the Compound and the Products in the Day One Field in the Territory. Takeda agrees to execute, acknowledge, and deliver any further documents or instruments and to perform all such other acts as may be necessary or appropriate in order to effect such right of reference.

(f) **Takeda's Right of Reference**. Subject to the terms and conditions of this Agreement, including Section 9.4, and without expanding any of the rights granted to Takeda under Section 2.5, Day One hereby grants to Takeda (or its Affiliates or its designees) access to, and a right of reference with respect to, any Regulatory Submissions and corresponding documentation to the extent related to the Takeda Products in the Takeda Field and Controlled by Day One at any time during the Term, solely for the purposes of Exploiting the Takeda Products in the Takeda Field in the Territory and the Compound for the use in the Manufacture of such Takeda Products. Day One agrees to execute, acknowledge, and deliver any further documents or instruments and to perform all such other acts as may be necessary or appropriate in order to effect such right of reference.

**4.9 Pharmacovigilance Agreement and Safety Data Exchange**.

(a) **Pharmacovigilance Agreement**. Not later than [*] following the receipt of a Takeda Development Notice, the Parties will execute a pharmacovigilance agreement on reasonable and customary terms that will provide, among other things, guidelines and responsibilities for (i) the receipt, investigation, recording, review, communication, reporting, and exchange between the Parties of Adverse Event reports and other safety information relating to the Products and the Compound in their respective fields, (ii) appropriate reconciliation procedures to ensure adequate and compliant exchange of safety data, (iii) contact with Regulatory Authorities with respect to the foregoing, and (iv) the maintenance of a global safety database with respect to the Products, in each case ((i) – (iv)), in accordance with Applicable Law (the "**Pharmacovigilance Agreement**"). The Pharmacovigilance Agreement will contain terms no less stringent than those required by ICH or other applicable guidelines in order to allow the Parties to meet the applicable regulatory and legal requirements regarding the management of safety data in their respective territories.

(b) **Safety Data Exchange**. Until the Pharmacovigilance Agreement is entered into by the Parties, the Parties will exchange any and all relevant safety data relating to the Products and the

Compound in their respective fields within appropriate timeframes and in an appropriate format to ensure compliance with the reporting requirements of all applicable Regulatory Authorities on a worldwide basis. Without limiting the generality of the foregoing, each Party will provide written notification to the other Party within [*] for Serious Adverse Events, and within [*] for non-Serious Adverse Events. In addition, to the extent requested by a Party, the other Party will promptly provide to such Party any other information or materials that such Party may require to provide to any Regulatory Authority with respect to any such Serious Adverse Event or Adverse Event. Each Party's rights and obligations under this Section 4.9(b) are subject to Section 9.4.

**4.10 Clinical Trial Holds; Recalls**.

(a) **Clinical Trial Holds**. Each Party will promptly (but in any event within [*]) inform the other Party in the event that any Clinical Trial for a Product is suspended, put on hold, or terminated in its respective field prior to completion thereof as a result of any action by a Regulatory Authority or such Party voluntarily.

(b) **Recalls**. Each Party will promptly notify the other Party upon its determination that any event, incident, or circumstance has occurred that may result in the need for a Recall, market withdrawal, or stock recovery of a Product (but in no event later than [*] and in all cases prior to the execution of such Recall, market withdrawal, or stock recovery). For all such Recalls, the Parties will reasonably consult with each other with respect to the actions to be taken to address such Recall. Subject to the foregoing, as between the Parties, Day One will be responsible for execution of all Recalls, market withdrawals, and stock recoveries that are taken with respect to any Product Commercialized by or on behalf of Day One or its Related Parties (a "**Day One Recall**"), and Takeda will be responsible for execution of all Recalls, market withdrawals, and stock recoveries that are taken with respect to any Takeda Product Commercialized by or on behalf of Takeda or any of its Affiliates or (sub)licensees (a "**Takeda Recall**"). As between the Parties, all expenses incurred in connection with any Day One Recall (including expenses for notification, destruction, and return of the affected Product and any refund to customers of amounts paid for such Product) will be the sole responsibility of Day One unless otherwise agreed by the Parties in a separate definitive agreement and all expenses incurred in connection with any Takeda Recall (including expenses for notification, destruction, and return of the affected Takeda Product and any refund to customers of amounts paid for such Product) will be the sole responsibility of Takeda unless otherwise agreed to in writing by the Parties.

**4.11 Labeling Information Exchange**. Subject to Section 9.4, the Parties will cooperate to develop methods and procedures for sharing information related to Labeling for each Product; *provided* that Day One will have final decision making authority with respect to the development and management of Labeling information for each Product Commercialized by Day One at its expense and Takeda will have final decision making authority with respect to the development and management of Labeling information for each Takeda Product Commercialized by Takeda in the Takeda Field at its expense.

**4.12 Diligence**. Day One will use Commercially Reasonable Efforts to Develop and seek Regulatory Approval for at least [*] in the Day One Field in either the United States or one of the United Kingdom, Germany, Italy, France, or Spain. Following receipt of Regulatory Approval for a Product in the Day One Field in such country in the Territory, Day One will use Commercially Reasonable Efforts to Commercialize such Product in such country.

**4.13 Point of Contact**. Promptly following the Effective Date, Day One and Takeda shall each appoint an individual to be its point of contact ("**Point of Contact**") with responsibility for (a) during the first year following the Effective Date, facilitating the performance and completion of the Transfer Plan, and (b) all other communication between the Parties under this Agreement. The Point of Contact shall facilitate resolution of potential and pending issues and potential disputes to enable the parties to seek to reach consensus and avert escalation of such issues or potential disputes.

**4.14 Pass-Through Payment Obligations**.

(a) **Sunesis License**. Takeda shall pay to Day One or Sunesis, at Day One's election, (i) any development milestones due to the Sunesis License to the extent directly attributable to the Development of the Takeda Product and in a manner consistent with the applicable provisions of the Sunesis License, as set forth on Schedule 4.14(a), *provided* that, in the event Development of the Product by Day One would cause such development milestones to come due, but for the Development of the Takeda Product, then Day One will reimburse Takeda any such amounts paid by Takeda, and (ii) any sales milestone or royalty amounts due to Sunesis under the Sunesis License to the extent directly attributable to the sale of the Takeda Product and in manner consistent with the applicable provisions of the Sunesis License, as set forth on Schedule 4.14(a).

(b) **Future Third Party Intellectual Property**.

(i) If Day One intends to obtain rights to any Intellectual Property from a Third Party after the Effective Date that, if Controlled by Day One, would be within the rights licensed or granted to Takeda hereunder, then Day One will provide Takeda written notice of its intent to acquire such rights. Following such written notice, the Parties will discuss (A) any milestone, royalty, or sales-based payment obligations to such Third Party that would be payable solely as a result of the Development, Manufacture or Commercialization of the Compound or any Product by or on behalf of Takeda or its Affiliates or (sub)licensees, (B) a reasonable allocation of any other payments required to be paid to such Third Party with respect to such Intellectual Property rights, and (C) and any other terms and conditions under which such Intellectual Property rights were granted by such Third Party that would be applicable to the rights licensed or granted to Takeda hereunder. Such Intellectual Property rights will be deemed Controlled by Day One and included within the rights licensed or granted to Takeda hereunder only if, within [*] after receipt of such written notice from Day One and prior to Day One entering into an agreement with such Third Party with respect to such Intellectual Property Rights, Takeda and Day One reach written agreement on the payment obligations described in clauses (A) and (B) above and to the other terms and conditions described in clause (C) above. Takeda may, in its sole discretion, decline to agree to the payment and other obligations described in clauses (A) through (C) above, in which case such Intellectual Property, if acquired or licensed by Day One, will not be deemed Controlled by Day One for the purposes of this Agreement.

(ii) If Takeda intends to obtain rights to any Intellectual Property from a Third Party after the Effective Date that, if Controlled by Takeda, would be within the rights licensed or granted to Day One hereunder, then Takeda will provide Day One written notice of its intent to acquire such rights. Following such written notice, the Parties will discuss (A) any milestone, royalty or sales-based payment obligation to such Third Party that would be payable solely as a result of the Development, Manufacture or Commercialization of the Compound or any Product by or on behalf of Day One or its Affiliates or (sub)licensees, (B) a reasonable allocation of any other payments required to be paid to such Third Party with respect to such Intellectual Property rights, and (C) and any other terms and conditions under which such Intellectual Property rights were granted by such Third Party that would be applicable to the rights licensed or granted to Day One hereunder. Such Intellectual Property rights Takeda will be deemed Controlled by Takeda and included within the rights licensed or granted to Day One hereunder only if, within [*] after receipt of such written notice from Takeda and prior to Takeda entering into an agreement with such Third Party with respect to such Intellectual Property rights, Day One and Takeda reach written agreement on the payment obligations described in clauses (A) and (B) above and to the other terms and conditions described in clause (C) above. Day One may, in its sole discretion, decline to agree to the payment and other obligations described in clauses (A) through (C) above, in which case such Intellectual Property, if acquired or licensed by Takeda, will not be deemed Controlled by Takeda for the purposes of this Agreement.

(iii) If Development of the Product by the non-Acquiring Party causes a development milestone payment to become due under an agreement entered into pursuant to Section 4.14(b)(i) or Section 4.14(b)(ii) between the Acquiring Party and a Third Party, which development milestone payment would have become due as a result of Development of the Product by the Acquiring Party but for the Development of the Product by the non-Acquiring Party, then the non-Acquiring Party will reimburse the Acquiring Party for the applicable development milestone payment to the extent required to achieve the agreement of the Parties reached pursuant to Section 4.14(b)(i) or Section 4.14(b)(ii), as applicable.

**4.15 Patent Assignments**. Takeda covenants and agrees that as soon as practicable, and in any event within [*] following the Effective Date, it will provide to Day One complete and accurate copies of the patent assignments set forth on Schedule 4.15.

## ARTICLE 5
## INTELLECTUAL PROPERTY

**5.1 Ownership**. Day One will own all Know-How developed or invented by or on behalf of Day One in the performance of activities related to the Products or the Compound in the Day One Field and all Patent Rights with a priority date after the Effective Date that Cover any such Know-How. Takeda will own all Know-How developed or invented by or on behalf of Takeda in the performance of activities related to the Takeda Products or the Compound for use of the Manufacture of Takeda Products in the Takeda Field and all Patent Rights that Cover any such Know-How; *provided* that upon termination of the Grant Back License, to the extent requested by Day One following such termination, Takeda will assign and transfer to Day One or its designee all such Know-How and all Patent Rights that Cover any such Know- How. All determinations of inventorship under this Agreement will be made in accordance with U.S. patent law.

**5.2 Know-How Disclosure**. Subject to Section 9.4, the Parties will as soon as reasonably practicable disclose to each other in writing any Know-How within the Day One Developed Technology or Takeda Developed Technology, as applicable, conceived or reduced to practice, which disclosure may be made on a [*] basis after such conception or reduction to practice, but no later than [*] after the applicable Party's intellectual property department or patent prosecution counsel receives notice of such conception or reduction to practice.

**5.3 Patent Prosecution**.

(a) **Patent Prosecution and Maintenance**. Immediately upon Takeda's transfer of the Assigned Patent Rights to Day One, as between the Parties, Day One will have the sole right to control Prosecution of the Assigned Patent Rights in the Territory in Day One's name at Day One's sole cost and expense. Subject to Section 9.4, Day One will keep Takeda reasonably informed of all substantive matters relating to Prosecution of the Assigned Patent Rights and will consider in good faith the comments, requests, and suggestions of Takeda with respect to strategies for Prosecuting the Assigned Patent Rights.

(b) **Cooperation in Patent Prosecution**. Takeda will, and will cause its Affiliates to, reasonably assist Day One or its designee and cooperate in any Prosecution of the Assigned Patent Rights or Patent Rights Covering any of the Assigned Technology at Day One's expense. Such cooperation includes executing all papers and instruments, or requiring its employees or contractors, to execute such papers and instruments, so as to enable Day One to apply for and to prosecute Patent Rights in any country claiming any Assigned Technology.

**5.4 Enforcement of Patent Rights**.

(a) **Notice**. If either Party receives notice of or otherwise becomes aware of any alleged or threatened infringement, misappropriation, or any other violation of any Assigned Patent Rights granted by a jurisdiction within the Territory, then it will promptly notify the other Party thereof in writing, including providing evidence of infringement or the claim of invalidity or unenforceability reasonably available to such Party.

(b) **Enforcement of Assigned Patent Rights**. As between the Parties, Day One will have the sole right (but not the obligation), except as provided in this Section 5.4(b) and Section 5.4(c)(i), at its sole expense, to control enforcement of the Assigned Patent Rights against any actual or threatened infringement, misappropriation, or other violation by a Third Party of any Assigned Patent Rights ("**Third Party Infringement**"), *provided* that Takeda will have the first right (but not the obligation), at its sole expense, to control enforcement of the Assigned Patent Rights against any Third Party Infringement relating solely to one or more Takeda Products in the Takeda Field, except as provided in Section 5.4(c)(ii). The non-enforcing Party will reasonably cooperate with the enforcing Party in any such Third Party Infringement action, at the enforcing Party's expense. The enforcing Party will give the non-enforcing Party timely notice of any proposed settlement of any such action instituted by the enforcing Party and will not, without the prior written consent of the non-enforcing Party, enter into any settlement that would (i) give rise to any financial liability or obligation of the non-enforcing Party or its Affiliates or require an admission of liability, wrongdoing or fault or waiver of rights of the non-enforcing Party or its Affiliates; or (ii) impair the non-enforcing Party's rights under any Assigned Patent Rights or this Agreement.

(c) **Step-in Right to Enforce Assigned Patent Rights**.

(i) With respect to any Third Party Infringement that does not solely relate to one or more Takeda Products in the Takeda Field, Day One will have a period of [*] after its receipt of notice of such Third Party Infringement to elect to so enforce the Assigned Patent Rights (or to settle or otherwise secure the abatement of such infringement). If Day One fails to commence a suit to enforce the applicable Assigned Patent Rights or to settle or otherwise secure the abatement of such infringement within such period, then Takeda may commence a suit or take action to enforce such Assigned Patent Rights against such Third Party at its own cost and expense in accordance with this Section 5.4(c)(i), and Day One will reasonably cooperate with Takeda in such action at Takeda's expense. Takeda will give Day One timely notice of any proposed settlement of any such action instituted by Takeda and will not, without the prior written consent of Day One, enter into any settlement that would (A) give rise to any financial liability or obligation of Day One or its Affiliates or require an admission of liability, wrongdoing or fault or waiver of rights of Day One or its Affiliates; or (B) impair Day One's rights under any Assigned Patent Rights or this Agreement.

(ii) With respect to any Third Party Infringement that solely relates to one or more Takeda Products in the Takeda Field, Takeda will have a period of [*] after its receipt of notice of such Third Party Infringement to elect to so enforce the Assigned Patent Rights (or to settle or otherwise secure the abatement of such infringement). If Takeda fails to commence a suit to enforce the applicable Assigned Patent Rights or to settle or otherwise secure the abatement of such infringement within such period, then Day One may commence a suit or take action to enforce such Assigned Patent Rights against such Third Party at its own cost and expense in accordance with this Section 5.4(c)(ii), and Takeda will reasonably cooperate with Day One in such action at Day One's expense. Day One will give Takeda timely notice of any proposed settlement of any such action instituted by Day One and will not, without the prior

written consent of Takeda, enter into any settlement that would (A) give rise to any financial liability or obligation of Takeda or its Affiliates or require an admission of liability, wrongdoing or fault or waiver of rights of Takeda or its Affiliates; or (B) impair Takeda's rights under any Assigned Patent Rights or this Agreement.

(iii) The Parties acknowledge that, notwithstanding any provision to the contrary set forth in this Agreement, the rights granted to Takeda with respect to the enforcement of the Assigned Patent Rights pursuant to this Section 5.4 are subject to Sunesis' rights under the Sunesis License.

(d) **Cooperation**. Each Party will provide to the Party enforcing any such rights under this Section 5.4 reasonable assistance in such enforcement, at such enforcing Party's request and expense, including joining such action as a party plaintiff if required by Applicable Law to pursue such action or providing the enforcing Party any reasonably requested documentation or other materials. The enforcing Party will keep the other Party regularly informed of the status and progress of such enforcement efforts, including providing the other Party a reasonably opportunity to comment on the enforcing Party's determination of litigation strategy and the filing of important papers to the competent court and the enforcing Party will consider such comments in good faith.

(e) **Expenses**. Subject to Section 5.4(f), the enforcing Party will be solely responsible for all expenses arising from a suit or action with respect to a Third Party Infringement. The Party not bringing an action with respect to a Third Party Infringement in the Territory under this Section 5.4 will be entitled to separate representation in such matter by counsel of its own choice and at its own expense, but such Party will at all times cooperate fully with the Party bringing such action.

(f) **Recoveries**. Any recoveries resulting from an action or settlement relating to a claim of Third Party Infringement will first be applied to reimburse the initiating Party's reasonable and documented out-of-pocket costs and expenses incurred in connection therewith and, with respect to any remaining recoveries, will be retained by the initiating Party.

(g) **Termination of Grant Back License**. Each Party's rights and obligations under this Section 5.4 are subject to Section 9.4.

**5.5 Defense of Patent Rights**.

(a) **Notice**. Each Party will promptly notify the other Party in writing if it receives notice or otherwise becomes aware of any Third Party's claim or assertion that any Product infringes any Patent Right granted by a jurisdiction within the Territory (a "**Third Party Action**").

(b) **Defense**. As between the Parties, (i) Day One will have the first right (but not the obligation), at its sole expense, to control defense of any Third Party Action related to Day One's Exploitation of any Product in the Day One Field, and (ii) Takeda will have the first right (but not the obligation), at its sole expense, to control defense of any Third Party Action solely related to Takeda's Exploitation of any Product in the Takeda Field. The non-controlling Party will reasonably cooperate with the controlling Party in any such Third Party Action, at the controlling Party's expense. The controlling Party will give the non-controlling Party timely notice of any proposed settlement of any such Third Party instituted by the controlling Party and will not, without the prior written consent of the non-controlling Party, enter into any settlement that would (A) give rise to any financial liability or obligation of the non- controlling Party or its Affiliates or require an admission of liability, wrongdoing or fault or waiver of rights of the non-controlling Party or its Affiliates; or (B) impair the non-controlling Party's rights under any Assigned Patent Rights or this Agreement.

(c) **Takeda Step-in Right to Defend Assigned Patent Rights**. With respect to any Third Party Action that does not solely relate to the Takeda Field, if Day One does not take any steps to defend such Third Party Action within [*] after its receipt of notice thereof, then Takeda will have the right and option to do so at its own cost and expense in accordance with this Section 5.5(c). Day One will reasonably cooperate with Takeda in the defense of any such Third Party Action controlled by Takeda, at Takeda's expense. Takeda will give Day One timely notice of any proposed settlement of any such Third Party Action and will not, without the prior written consent of Day One, enter into any settlement that would (a) give rise to any financial liability or obligation of Day One or its Affiliates or require an admission of liability, wrongdoing or fault or waiver of rights of Day One or its Affiliates; or (b) impair Day One's rights under any Assigned Patent Rights or this Agreement.

(d) **Cooperation**. The non-defending Party will reasonably assist and cooperate with the Party conducting the defense of a Third Party Action, including if required to conduct such defense, furnishing a power of attorney.

(e) **Termination of Grant Back License**. Each Party's rights and obligations under this Section 5.5 are subject to Section 9.4.

**5.6 Drug Price Competition and Patent Right Restoration Act**. Each Party will promptly, and in any event at least [*] before any time limit set forth in an Applicable Law or regulation, including the time limits set forth under the Hatch-Waxman Act (21 U.S.C. § 355), give written notice to the other Party of any certification of which it becomes aware filed pursuant to 21 U.S.C. Section 355(b)(2)(A) (or any amendment or successor statute thereto) claiming that any Assigned Patent Rights Covering any Product, or the Exploitation thereof, are invalid or unenforceable, or that infringement will not arise from the Exploitation of a Product by a Third Party.

**5.7 Listing of Patent Rights**. Day One will have the sole right to determine which of the Assigned Patent Rights, if any, will be listed for inclusion in the Approved Drug Products with Therapeutic Equivalence Evaluations pursuant to 21 U.S.C. Section 355, or any successor law in the United States, together with any comparable laws in any other country in the Territory. The foregoing rights of Day One will be exercised only in consultation with Takeda, and Takeda will have the prior right to review and comment on any Patent Right listing. Day One will incorporate Takeda's reasonable comments into such listings. Each Party's rights and obligations under this Section 5.7 are subject to Section 9.4.

**5.8 Trademarks**. Each Party has the right to use any Trademark it Controls for the Commercialization of Products in its respective field, and each Party and its Affiliates will retain all rights, title, and interest in and to its and their respective corporate names and logos. Each Party will have discretion over the Trademarks to be exclusively used in connection with the Commercialization of such Product (the "**Product Trademarks**") to be used by such Party in connection with the Commercialization of a Product in its respective field, subject to the other Party's right to review and comment on such Product Trademarks, other than any Trademarks comprising any corporate name or logo, prior to their use in any Commercialization of such Product. The Parties will coordinate to ensure that any Product Trademark proposed to be used by a Party in Commercializing a Product are sufficiently distinctive from, and do not cause confusion with, the other Party's existing or proposed Product Trademarks in its respective field. Each Party will solely own and be solely responsible for applying for and maintaining registrations of the Product Trademarks, in its respective field (including payment of expenses associated therewith), and all goodwill associated therewith will inure to the benefit of such Party. Each Party will be responsible for all expenses incurred by such Party to apply for and maintain such Product Trademarks and assume full responsibility, at its sole expense, for any infringement of its Product Trademarks by a Third Party. Each Party's rights and obligations under this Section 5.8 are subject to Section 9.4.

## ARTICLE 6
## REPRESENTATIONS, WARRANTIES AND COVENANTS

**6.1 Mutual Representations and Warranties**. Each Party represents and warrants to the other Party as of the Effective Date as follows:

(a) **Organization**. It is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization, and has all requisite power and authority, corporate or otherwise, to execute, deliver, and perform this Agreement.

(b) **Binding Agreement**. This Agreement is a legal and valid obligation binding upon such Party and enforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, or other laws of general application affecting the enforcement of creditor rights, judicial principles affecting the availability of specific performance, and general principles of equity (whether enforceability is considered a proceeding at law or equity).

(c) **Authorization**. The execution, delivery, and performance of this Agreement by such Party have been duly authorized by all necessary corporate action and do not conflict with any agreement, instrument, or understanding, oral or written, to which it is a party or by which it is bound, nor violate any Applicable Law or any order, writ, judgment, injunction, decree, determination, or award of any court or governmental body, or administrative or other agency presently in effect applicable to such Party.

(d) **No Further Approval**. It is not aware of any government authorization, consent, approval, license, exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, under any Applicable Law, currently in effect, necessary for, or in connection with, the transactions contemplated by this Agreement or any other agreement or instrument executed in connection herewith, or for the performance by it of its obligations under this Agreement and such other agreements (save for Regulatory Approvals and similar authorizations from Regulatory Authorities necessary for the Exploitation of the Compound and the Products as contemplated hereunder).

(e) **No Inconsistent Obligations**. Neither Party is under any obligation, contractual or otherwise, to any Person that conflicts with or is inconsistent in any material respect with the terms of this Agreement, or that would impede the diligent and complete fulfillment of its obligations hereunder.

**6.2 Takeda Representations**. Takeda represents and warrants to Day One as follows as of the Effective Date:

(a) **Third Party Payments**. There are no agreements between Takeda or its Affiliates and any Third Party granting rights in the Assigned Patent Rights, other than Sunesis' ownership interest in any such Patent Rights pursuant to the Sunesis License.

(b) **Third Party Obligations**. To Takeda's knowledge, without any independent investigation, other than any payment obligations under the Sunesis License, no financial or other obligations will arise under any written agreement between Takeda or any of its Affiliates and any Third Party as a result of the assignment to Day One of the Assigned Technology ("**Takeda Third Party Obligations**").

(c) **Sufficient Rights**. Takeda or its Affiliates is the sole and exclusive owner of the Acquired Assets (and the inventions claimed in any Assigned Patent Right), other than Sunesis' ownership interest in any such Patent Rights pursuant to the Sunesis License, with good and marketable title thereto,

all of which is free and clear of any claims, liens, charges, or encumbrances (other than those entered into in the ordinary course of business). Takeda has all rights necessary to grant the rights and licenses under (i) the Licensed Intellectual Property and rights of reference to Regulatory Submissions, in each case, Controlled by Takeda or any of its Affiliates as of the Effective Date, that it grants to Day One in this Agreement.

(d) **Completeness of Assigned Patent Schedule**. Schedule 1.10 is a complete and accurate list of all Patent Rights Controlled by Takeda that Cover the Compound or one or more Products or the Exploitation thereof, and not any other product or compound Controlled by Takeda or any of its Affiliates. The Assigned Patent Rights include (i) Takeda's interest in all Patent Rights jointly owned by Takeda and Sunesis, (ii) all Patent Rights in the Development Technology (as defined in the Sunesis License), and (iii) all Patents Rights that Takeda Controls as of the Effective Date that were assigned to Takeda under the Takeda-Biogen Agreement, in each case ((i) through (iii)), that Cover the Compound or one or more Products or the Exploitation thereof.

(e) **Registration and Maintenance**. To Takeda's knowledge, without any independent investigation, all registrations and applications for the Assigned Patent Rights are valid, enforceable, and subsisting. Except as stated therein, no registration, or application therefor, for any of the Assigned Patent Rights has lapsed, expired, been abandoned, or been withdrawn, and no such registrations, or applications therefor, are the subject of any opposition, interference, cancellation, inter partes review, post-grant review, or other legal or governmental proceeding pending before any Governmental Authority (other than standard patent prosecution before a patent office). To Takeda's knowledge, each of the Assigned Patent Rights properly identifies each and every inventor of the claims therein as determined in accordance with Applicable Law of the jurisdiction in which such Assigned Patent Right is issued or such application is pending. There are no actions that are required to be taken within [*] of the Effective Date hereof with respect to the Assigned Patent Rights, including the payment of any registration, maintenance or renewal fees or the filing of any response to the United States Patent and Trademark Office actions or foreign equivalents. Takeda has provided or otherwise made available to Day One current, true and complete copies of all Assigned Patent Rights.

(f) **Non-Infringement**. There is no claim pending by Takeda alleging that a Third Party is or was infringing, misappropriating, or otherwise violating the Assigned Technology or the Licensed Intellectual Property, and, to Takeda's knowledge, as of the Effective Date, the Exploitation of the Compound or the Products does not infringe or misappropriate any Patent Right or other Intellectual Property of any Third Party.

(g) **Completeness of Assigned Agreements Schedule**. Schedule 1.7 is a complete and accurate list of all agreements to which Takeda or one or more of its Affiliates is a party that relate solely to the Exploitation of one or more Products or the Compound and not to any other product Controlled by Takeda or any of its Affiliates.

(h) **Absence of Litigation and Claims**. To Takeda's knowledge, without any independent investigation, Takeda and its Affiliates have not received any notices or correspondence from the FDA or any other Governmental Authority requiring the termination, suspension, or material modification of any preclinical study or Clinical Trial of a Product or Compound conducted by or on behalf of Takeda or its Affiliates. To Takeda's knowledge, without any independent investigation, none of the Acquired Assets is subject to any order, writ, injunction, judgment, decree, ruling, award, assessment or arbitration award of any Governmental Authority.

**6.3 Mutual Covenants**.

(a) **No Debarment**. Neither Party nor any of its Affiliates will engage, in any capacity, in connection with this Agreement, any Person who either has been debarred by such a Regulatory Authority, or is the subject of a conviction described in Section 306 of the FFDCA. Each Party will inform the other Party in writing promptly if it or any Person engaged by such Party or any of its Affiliates who is performing any activities under or in connection with this Agreement is debarred or is the subject of a conviction described in Section 306 of the FFDCA, or if any action, suit, claim, investigation, or legal or administrative proceeding is pending or, to such Party's knowledge, is threatened, relating to the debarment or conviction of such Party, any of its Affiliates, or any such Person performing activities.

(b) **Specific Notifications Regarding Products**.

(i) Subject to Section 9.4, prior to Regulatory Approval of any Takeda Product in the Takeda Field in the Territory, Day One will, and will cause its Affiliates and Related Parties to, promptly advise Takeda if such party is aware of any suspension, clinical hold, or other regulatory action by any Regulatory Authority relating to any Product where such action has had or would reasonably be expected to have a material adverse impact on the Exploitation of any Takeda Product in the Takeda Field in the Territory.

(ii) Subject to Section 9.4, prior to Regulatory Approval of any Product in the Day One Field in the Territory, Takeda will, and will cause its Affiliates and sublicensees to, promptly advise Day One if such party is aware of any suspension, clinical hold, or other regulatory action by any Regulatory Authority relating to any Product where such action has had or would reasonably be expected to have a material adverse impact on the further Exploitation of such Product in the Day One Field in the Territory.

(c) **Invention Assignment**. To the extent permissible under Applicable Law, Day One will cause its and its Affiliates' employees performing activities under this Agreement to be under an obligation to assign all rights, title, and interests in and to their inventions and other Know-How, whether or not patentable, and Intellectual Property rights therein, to Day One or its Affiliates as the sole owner thereof. Takeda will have no obligation to contribute to any remuneration of any inventor employed or previously employed by Day One or any of its Affiliates in respect of any such inventions, Know-How, or discoveries and Intellectual Property rights therein that are so assigned to Day One or its Affiliates. Day One will pay all such remuneration due to such inventors with respect to such inventions and other Know- How, and Intellectual Property rights therein.

(d) **Foreign Corruption Compliance**. In performing its obligations under this Agreement, each Party will, and will cause its Affiliates to, comply with all Applicable Law, including any applicable anti-corruption or anti-bribery laws or regulations, of any Governmental Authority with jurisdiction over the activities performed by such Party or its Affiliates in furtherance of such obligations.

(e) **Notice of Adverse Events**.

(i) Subject to Section 9.4, Day One will notify Takeda promptly in writing of Day One's becoming aware of any drug-related Serious Adverse Event that arises in connection with the administration of any Product. All such notices (and any information related thereto) will be considered Confidential Information of Day One and will be maintained in confidence by Takeda.

(ii) Subject to Section 9.4, Takeda will notify Day One promptly in writing of Takeda's becoming aware of any drug-related Serious Adverse Event that arises in connection with the administration of any Takeda Product. All such notices (and any information related thereto) will be considered Confidential Information of Takeda and will be maintained in confidence by Day One.

(f) **Transparency Reporting**. Each Party will be responsible for tracking and reporting transfers of value initiated and controlled by its and its Affiliates' employees, contractors, and agents pursuant to the requirements of the marketing reporting laws of any Governmental Authority in the Territory, including Section 6002 of the Patient Protection and Affordable Care Act, commonly referred to as the "Sunshine Act."

**6.4 No Other Representations**. THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS ARTICLE 6 ARE IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR NON-MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS. EACH PARTY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE EXPLOITATION OF ANY PRODUCT PURSUANT TO THIS AGREEMENT WILL BE SUCCESSFUL OR THAT ANY PARTICULAR SALES LEVEL WITH RESPECT TO A PRODUCT WILL BE ACHIEVED. EXCEPT AS EXPRESSLY SET FORTH IN THE EXPRESS REPRESENTATIONS AND WARRANTIES IN THIS AGREEMENT, THE ACQUIRED ASSETS ARE TRANSFERRED AND ASSIGNED TO DAY ONE ON AN "AS IS" BASIS.

## ARTICLE 7
## INDEMNIFICATION AND INSURANCE

**7.1 Indemnification by Day One**. Day One agrees to indemnify, hold harmless, and defend Takeda and its Affiliates, and their respective officers, directors, employees, agents, and assigns (collectively, "**Takeda Indemnitees**"), from and against any Losses to the extent arising from: (a) any claim, demand, action or other proceeding by a Third Party (each, a "**Third Party Claim**") resulting from the Exploitation of the Compound or any Product by or on behalf of Day One, its Affiliates or Related Parties on or after the Effective Date, and (b) any breach, inaccuracy in or failure to perform any representation or warranty, covenant or agreement in this Agreement by Day One.

**7.2 Indemnification by Takeda**. Takeda agrees to indemnify, hold harmless, and defend Day One and its Affiliates, and their respective officers, directors, employees, agents, and assigns (collectively, "**Day One Indemnitees**"), from and against any Losses to the extent arising from: (a) any Third Party Claim resulting from the Exploitation of the Compound or any Product prior to the Effective Date or on or after the Effective Date by or on behalf of Takeda, its Affiliates, licensees or sublicensees (which licensees and sublicensees shall not include Day One or its Related Parties for the purposes of this Section 7.2), and (b) any breach, inaccuracy in or failure to perform any representation or warranty, covenant or agreement in this Agreement by Takeda.

**7.3 Indemnification Procedure for Claims**. In connection with any Loss arising from a Third Party Claim for which a Party (the "**Indemnified Party**") seeks indemnification from the other Party (the "**Indemnifying Party**") pursuant to this Agreement, the Indemnified Party will: (a) give the Indemnifying Party prompt written notice of the Third Party Claim; *provided*, *however*, that failure to provide such notice will not relieve the Indemnifying Party from its liability or obligation hereunder, except to the extent of any material prejudice as a direct result of such failure; (b) cooperate with the Indemnifying Party, at the Indemnifying Party's expense, in connection with the defense and settlement of the Third Party Claim; and (c) permit the Indemnifying Party to control the defense and settlement of the Third Party Claim; *provided*, *however*, that the Indemnifying Party will not without the Indemnified Party's prior written consent, which will not be unreasonably withheld or delayed, consent to or enter into any compromise or settlement of any such Third Party Claim that commits the applicable indemnitee to take, or to forbear to take, any action or does not provide for a full and complete written release by the applicable Third Party of any applicable indemnitee. Further, the Indemnified Party shall have the right to participate (but not control) and be

represented in any such suit or action by advisory counsel of its selection and at its own expense; *provided* that if an Indemnified Party determines in good faith that there is a reasonable probability that such Third Party Claim would materially adversely affect it other than as a result of monetary damages for which it would be entitled to relief under this Agreement, then the Indemnified Party may, by giving written notice to the Indemnifying Party, assume control of the defense of any Third Party Claim, but will not without the Indemnifying Party's prior written consent, which shall not be unreasonably withheld or delayed, consent to enter into any compromise or settlement of any such Third Party Claim if it involves a payment to be made on the part of the Indemnifying Party.

**7.4 Limitations**.

(a) **Limitation of Liability**. NEITHER PARTY WILL BE LIABLE UNDER ANY LEGAL THEORY (WHETHER TORT, CONTRACT OR OTHERWISE) FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE EXERCISE OF ITS RIGHTS UNDER THIS AGREEMENT, INCLUDING LOST PROFITS ARISING FROM OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF ANY NOTICE OF SUCH DAMAGES, EXCEPT AS A RESULT OF A BREACH OF THE CONFIDENTIALITY AND NON-USE OBLIGATIONS IN ARTICLE 8. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION 7.4 WILL LIMIT OR RESTRICT THE INDEMNIFICATION RIGHTS OR OBLIGATIONS OF EITHER PARTY.

(b) **Liability Caps**.

(i) In no event shall either Party's Liability pursuant to Section 7.1 or Section 7.2 (as applicable) for breaches of any representations or warranties contained in Section 6.2(c) (Sufficient Rights) (collectively "**Fundamental Breaches**"), exceed $[*].

(ii) Other than with respect to a Fundamental Breach, in no event will either Party's liability pursuant to Section 7.1 or Section 7.2 (as applicable) for breaches of the representations and warranties set forth in Section 6.1 and Section 6.2 exceed the Cap.

(iii) The limitations on Liability set forth in this Section 7.4(b) shall not apply to any Liabilities arising from fraud by Takeda.

(c) **Basket**. Other than with respect to a Fundamental Breach, a Party shall not be liable to the other Party for breaches of the representations and warranties contained in this Agreement unless with respect to any such individual breach, the aggregate Losses arising from such individual breach exceed $[*] (the "**Basket**"), at which point the breaching Party will indemnify the harmed party for the amount of such Losses in excess of the Basket, subject to the other limitations contained in this Article 7. Losses arising from any potential indemnification claims that arise out of or involve or relate to similar facts or are based on related or similar occurrences, events or circumstances will be aggregated and treated as a single breach for purposes of this Section 7.4(c).

(d) **Survival**. The representations and warranties contained in this Agreement shall survive the Effective Date until (i) [*] of the Effective Date for Claims arising from or related to any Fundamental Breaches, and (ii) [*] following the Effective Date for all other Claims arising from or related to any other breach of any representation or warranty set forth in this Agreement, and all rights to indemnification hereunder for any breach of any representation or warranty will terminate and expire on, and no action or proceedings seeking damages or other relief for breach of any representation or warranty or for misrepresentation or inaccuracy may be commenced after, such applicable anniversary. The covenants and agreements contained herein shall survive until the expiration of the relevant statute of limitations period.

(e) **Insurance Recovery**. Notwithstanding the foregoing, the indemnifiable Losses shall be net of the amount of any insurance proceeds actually received by the Indemnified Party, and each Indemnified Party agrees to file claims under each of its applicable insurance policies and to use commercially reasonable efforts to pursue all such insurance claims (but shall not include an obligation to commence litigation), and any indemnity or contribution amounts actually recovered by such Indemnified Party for the applicable matter hereunder.

(f) **Exclusive Remedy**. Each of the Parties acknowledges and agrees that from and after the Effective Date, the indemnification provisions of Article 7 shall be the sole and exclusive remedy of the Takeda Indemnitees and Day One Indemnitees with respect to the Contemplated Transactions, except as set forth in Section 10.3.

**7.5 Insurance**. Day One will maintain insurance during any time it is undertaking Development and Commercialization of any Product or the Compound and for a period of at least [*] thereafter with a reputable, solvent insurer (carrier rating of AM Best A-VII (or equivalent or better)) in at least the following amounts: product liability insurance with limits of liability not less than [*] per occurrence and [*] in the aggregate. Day One will provide Takeda with evidence of the existence and maintenance of such insurance coverage. Takeda and its Affiliates and its and their respective employees, officers, directors, shareholders, consultants, authorized agents, and assigns will be named as additional insureds under all of the foregoing policies of insurance obtained by Day One.

## ARTICLE 8
## CONFIDENTIALITY AND PUBLICITY

**8.1 Nondisclosure**. It is understood and agreed by the Parties that:

(a) during the Term and for a period of [*] thereafter, a Party (the "**Receiving Party**") receiving Confidential Information of the other Party (the "**Disclosing Party**") will (i) maintain in confidence such Confidential Information using at least the same degree of care with which such Receiving Party uses to maintain in confidence its own confidential or proprietary information of similar kind and value (but in no event less than a reasonable degree of care), (ii) not disclose such Confidential Information to any Third Party without the prior written consent of the Disclosing Party, except for disclosures expressly permitted below, and (iii) not use such Confidential Information for any purpose except those permitted by this Agreement (it being understood that this Section 8.1 will not create or imply any rights, licenses or covenants not expressly granted under this Agreement). Notwithstanding any provision to the contrary in this Agreement, the obligations of confidentiality and non-use with respect to any trade secret within such Confidential Information will survive such [*] period for so long as such Confidential Information remains protected as a trade secret under Applicable Law;

(b) the Licensed Know-How will be considered the Confidential Information of Takeda;

(c) the terms and conditions of this Agreement will be considered the Confidential Information of both Parties; and

(d) as of the Effective Date, Day One will be deemed the Disclosing Party, and Takeda the Receiving Party, with respect to any and all Know-How or other proprietary information and materials within the Acquired Assets.

**8.2 Exceptions**. The obligations in Section 8.1 will not apply with respect to any portion of the Confidential Information that the Receiving Party can show by competent evidence:

(a) is publicly disclosed by the Disclosing Party, either before or after it is disclosed to the Receiving Party hereunder;

(b) is known to the Receiving Party or any of its Affiliates, without any obligation to keep it confidential or any restriction on its use, prior to disclosure by the Disclosing Party, as evidenced by contemporaneous written records; *provided* that, as of the Effective Date, the exception in this clause (b) shall not apply to Takeda or any of its Affiliates as the Receiving Party with respect any Confidential Information within the Acquired Assets;

(c) is subsequently disclosed to the Receiving Party or any of its Affiliates on a non- confidential basis by a Third Party that, to the Receiving Party's knowledge, is not bound by a similar duty of confidentiality or restriction on its use;

(d) is now, or hereafter becomes, through no act or failure to act on the part of the Receiving Party or any of its Affiliates, generally known or available, either before or after it is disclosed to the Receiving Party;

(e) is independently discovered or developed by or on behalf of the Receiving Party or any of its Affiliates without the use of Confidential Information belonging to the Disclosing Party; *provided* that, as of the Effective Date, the exception in this clause (e) shall not apply to Takeda or any of its Affiliates as the Receiving Party with respect any Confidential Information within the Acquired Assets; or

(f) is the subject of written permission to disclose provided by the Disclosing Party.

**8.3 Authorized Disclosure**. The Receiving Party may disclose Confidential Information belonging to the Disclosing Party without the prior written approval of the Disclosing Party only to the extent such disclosure is reasonably necessary in the following instances:

(a) Prosecuting Patent Rights as permitted by this Agreement;

(b) preparing and submitting Regulatory Submissions and obtaining and maintaining Regulatory Approvals as permitted by this Agreement;

(c) prosecuting or defending litigation, including responding to a subpoena in a Third Party litigation;

(d) complying with Applicable Law or court or administrative orders; or

(e) in communications with existing or bona fide prospective acquirers, merger partners, collaboration partners, lenders or investors, and consultants and advisors of the Receiving Party in connection with transactions or bona fide prospective transactions with the foregoing, in each case on a "need-to-know" basis and under confidentiality provisions at least as restrictive or protective of the Parties as those set forth in this Agreement or otherwise customary for such type and scope of disclosure any such disclosure is limited to the maximum extent practicable for the particular context in which it is being disclosed;

(f) to allow the Receiving Party to exercise its rights and perform its obligations hereunder, *provided* that such disclosure is covered by terms of confidentiality and non-use at least as restrictive as those set forth herein;

(g) to comply with Applicable Law (whether generally or in pursuit of an application for listing of securities) including the SEC or equivalent foreign agency or regulatory body, or otherwise required by judicial or administrative process, provided that in each such event, as promptly as reasonably practicable and to the extent not prohibited by Applicable Law or judicial or administrative process, such Party will notify the other Party of such required disclosure and provide a draft of the disclosure to the other Party reasonably in advance of such filing or disclosure for the other Party's review and comment. The non- disclosing Party will provide any comments as soon as practicable, and the disclosing Party will consider in good faith any timely comments provided by the non-disclosing Party; provided that the disclosing Party may or may not accept such comments in its sole discretion. Confidential Information that is disclosed in order to comply with Applicable Law or by judicial or administrative process pursuant to this Section, in each case, will remain otherwise subject to the confidentiality and non-use provisions of this Article 8 with respect to the Party disclosing such Confidential Information, and such Party will take all steps reasonably necessary, including seeking of confidential treatment or a protective order for a period of at least [*] (to the extent permitted by Applicable Law or Governmental Authority), to ensure the continued confidential treatment of such Confidential Information, and each Party will be responsible for its own legal and other external costs in connection with any such filing or disclosure pursuant to this Section 8.3(g);

(h) where Takeda is the Receiving Party, to its Affiliates for Takeda's or its Affiliates' internal research and development of Products under this Agreement; and

(i) to its Affiliates, sublicensees or prospective sublicensees, contractors, subcontractors or prospective contractors or subcontractors, consultants, agents, insurers, lenders and financial and other advisors on a "need-to-know" basis in order for the Receiving Party to exercise its rights or fulfill its obligations under this Agreement, each of whom prior to disclosure must be bound by obligations of confidentiality and restrictions on use of such Confidential Information that are at least as restrictive or protective of the Parties as those set forth in this Agreement or otherwise customary for such type and scope of disclosure any such disclosure is limited to the maximum extent practicable for the particular context in which it is being disclosed; provided, however, that, the Receiving Party will remain responsible for any failure by any Person who receives Confidential Information pursuant to Section 8.3(e) or this Section 8.3(i) to treat such Confidential Information as required under this Article 8.

If and whenever any Confidential Information is disclosed in accordance with this Section 8.3, such disclosure will not cause any such information to cease to be Confidential Information except to the extent that such disclosure results in a public disclosure of such information (other than by breach of this Agreement). In the event a Party is required to make a disclosure of the other Party's Confidential Information pursuant to clauses (a) through (d) of this Section 8.3, it will, except where impracticable, give reasonable advance notice to the other Party of such disclosure and use not less than the same efforts to secure confidential treatment of such information as it would to protect its own confidential information from disclosure, permit the Disclosing Party to use its reasonable efforts to secure confidential treatment of such Confidential Information prior to such disclosure (whether through protective orders or otherwise), cooperate with the Disclosing Party in the exercise of its right to protect the confidentiality of the Confidential Information, and disclose only that Confidential Information which is required to be disclosed.

**8.4 Public Disclosures**. Neither Party may issue a press release or other public statement, whether oral or written, disclosing the existence of this Agreement, the terms hereof, or any information relating hereto without the prior written consent of the other Party, except as otherwise provided for in this

Article 8, including pursuant to Section 8.3(g). Each Party agrees that any such announcement will not contain Confidential Information of the other Party or, if disclosure of such Confidential Information is required by Applicable Law or the rules of the SEC, any stock exchange or listing entity, will make reasonable efforts to minimize such disclosure and obtain confidential treatment for any such information that is disclosed to a government agency. Upon the request of Day One, the Parties may issue one or more press releases regarding the signing of this Agreement, each of which must be approved in writing by the other Party. After the issuance of such press release or other public disclosure by a Party, the disclosing Party may make subsequent public disclosures reiterating such information without having to obtain the other Party's prior consent and approval so long as the information in such press release or other public announcement remains true, correct, and the most current information with respect to the subject matters set forth therein.

**8.5 Use of Names**. Neither Party (nor any of its Affiliates or agents) will use the registered or unregistered Trademarks of the other Party or its Affiliates in any press release, publication, or other form of promotional disclosure without the prior written consent of the other Party in each instance.

**8.6 Publications**. The Parties recognize the desirability of publishing and publicly disclosing the results of, and scientific information regarding, activities under this Agreement. Accordingly, each Party will be free to publish and present the results of and information regarding activities under this Agreement in such Party's field as provided in this Section 8.6 in a manner consistent with standard academic practice regarding authorship of scientific publications and recognition of contribution of other parties in any publication governed by this Section 8.6, including International Committee of Medical Journal Editors standards regarding authorship and contributions. For clarity, Takeda and its Affiliates may, subject to the prior written consent of Day One (in its sole discretion), publish or present any results and information initially submitted for publication or presentation prior to the Effective Date. Notwithstanding the foregoing, Takeda will not be required to seek Day One's prior written approval to publish or present the publications set forth on Schedule 8.6. Takeda and its Affiliates will not publish or present any results and information that were not initially submitted for publication or presentation prior to the Effective Date, without the prior written consent of Day One (in its sole discretion). Each Party shall submit to the other Party for review and approval the portion of any proposed publication or public presentation under this Section 8.6 that contains such other Party's Confidential Information (the "**Review Material**"). Written copies of the Review Material will be submitted to the non-publishing Party no later than [*] before submission for publication or presentation, and the non-publishing Party will provide its comments with respect to the Review Material no later than [*] after its receipt of such written copy.

## ARTICLE 9
## TERM AND TERMINATION

**9.1 Term**. This Agreement will become effective on the Effective Date and unless earlier terminated pursuant to this Article 9, will remain in effect until the expiration of all Assigned Patent Rights and Licensed Patent Rights on a country-by-country-basis in the Territory (the "**Term**").

**9.2 Causes for Termination**.

(a) **Termination for Failure to Issue Equity**. Subject to the provisions of Section 9.6, Takeda may, at any time upon written notice to Day One during the [*] period following the Effective Date, terminate this Agreement [*] after providing written notice to Day One, if Day One does not issue to Takeda the Series A Preferred Stock in accordance with Section 3.2 and cure such default within [*] of the date of such notice from Takeda. In the event of any Dispute regarding the issuance of the Takeda the Series A Preferred Stock in accordance with Section 3.2, such [*] period during which Takeda has the right to terminate this Agreement upon [*] written notice for Day One's failure to issue to Takeda such Series A Preferred Stock in accordance with Section 3.2 will be tolled pending resolution of such Dispute pursuant to Section 9.6.

(b) **Termination for Cessation of Development or Commercialization Activities**. During the Term, and prior to the first commercial sale of any Product by or on behalf of Day One, its Affiliates or Related Parties, if Day One, its Affiliates or Related Parties do not conduct any Development activities with respect to at least one Product for a continuous period of longer than [*], and such suspension of activity is not: (i) by written agreement of the Parties, or (ii) a result of Day One's reasonable response to guidance from or action by a Regulatory Authority in the Territory (such as a clinical hold, or a Recall or withdrawal), then Takeda may, at its election, terminate this Agreement upon [*] prior written notice to Day One.

(c) **Termination for Bankruptcy**.

(i) This Agreement may be terminated by Takeda upon the filing or institution of bankruptcy, reorganization, liquidation or receivership proceedings, or upon an assignment of a substantial portion of the assets for the benefit of creditors by Day One; *provided*, *however*, that in the event of any involuntary bankruptcy or receivership proceeding such right to terminate will only become effective if Day One consents to the involuntary bankruptcy or receivership or such proceeding is not dismissed within [*] after the filing of such bankruptcy or receivership.

(ii) All licenses and rights to licenses granted under or pursuant to this Agreement by each Party to the other Party are, and will otherwise be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code (the "**Bankruptcy Code**"), licenses of rights to "intellectual property" as defined under Section 101(35A) of the Bankruptcy Code. The Parties agree that each Party, as a licensee of certain rights under this Agreement, will retain and may fully exercise all of its rights and elections under the Bankruptcy Code. The Parties further agree that upon commencement of a bankruptcy proceeding by or against a Party under the Bankruptcy Code, the other Party will be entitled to a complete duplicate of, or complete access to (as such other Party deems appropriate), all such Intellectual Property and all embodiments of such Intellectual Property. Such intellectual property and all embodiments of such intellectual property will be promptly delivered to such other Party (A) upon any such commencement of a bankruptcy proceeding and upon written request by such other Party, unless the Party subject to such bankruptcy proceeding elects to continue to perform all of its obligations under this Agreement, or (B) if not delivered under (A) above, upon the rejection of this Agreement by or on behalf of the Party subject to such bankruptcy proceeding and upon written request by such other Party. Each Party (in any capacity, including debtor-in-possession) and its successors and assigns (including any trustee) agrees not to interfere with the exercise by the other Party or its Affiliates of its rights and licenses to such Intellectual Property and such embodiments of Intellectual Property in accordance with this Agreement, and agrees to assist the other Party and its Affiliates in obtaining such Intellectual Property and such embodiments of Intellectual Property in the possession or control of Third Parties as reasonably necessary or desirable for the other Party to exercise such rights and licenses in accordance with this Agreement. The foregoing provisions are without prejudice to any rights Takeda or Day One may have arising under the Bankruptcy Code or other Applicable Law.

**9.3 Effects of Termination**. Upon any termination of this Agreement, all rights and obligations of the Parties will terminate except as provided in this Section 9.3 and Section 9.5. Upon the termination of this Agreement pursuant to Section 9.2:

(a) **Licenses**. As of the effective date of termination of this Agreement, all licenses and all other rights granted by Takeda to Day One under the Licensed Intellectual Property and Takeda Developed Technology will terminate and all sublicenses granted by Day One pursuant to Section 2.4(b)

will also terminate; *provided* that, upon the request of any (sub)licensee of Day One not then in breach of its (sub)license agreement or the terms of this Agreement applicable to such sublicensee, Takeda will enter into a direct license from Takeda to such sublicensee on the same terms as this Agreement, taking into account any difference in license scope, territory, and duration of such sublicense grant. In addition, upon the termination of this Agreement, Takeda will have, and Day One hereby grants to Takeda, effective upon such termination, a worldwide, exclusive, royalty-bearing, perpetual, and irrevocable (subject to Takeda's compliance with its payment obligations, to be determined as further described below, including the applicable notice and cure period), and sublicensable (through multiple tiers) license under the Know-How developed or invented by or on behalf of Day One in the performance of activities related to the Products or the Compound in the Day One Field and all Patents Rights with a priority date after the Effective Date that Cover any such Know-How, in each case, to the extent Controlled by Day One, to Exploit Products in any and all fields of use, and for a period of [*] following the date of such Termination the Parties will negotiate in good faith commercially reasonable economic terms, including a notice and cure period for the breach of any payment obligations under such economic terms, with respect to the foregoing license of rights; *provided* that, if the Parties fail to reach agreement during such [*] period, such matter will be resolved in accordance with Section 9.6. In addition, Day One will assign to Takeda the Sunesis License and any Third Party IP Agreement pursuant to which Day One then Controls any Intellectual Property necessary or useful to Exploit Products in the Day One Field, if permitted under such Third Party IP Agreement and, if such Third Party IP Agreement cannot be assigned to Takeda, to cooperate with Takeda's reasonable efforts to obtain a license directly from such Third Party. Following such termination, Day One will (i) transfer or assign, or have transferred or assigned, to Takeda or its designee Regulatory Submissions and Regulatory Approvals for the Products then owned by Day One; (ii) transfer or assign, or have transferred or assigned, to Takeda or its designee Day One's rights, title, and interests in and to all clinical trial agreements, manufacturing and supply agreements, and distribution agreements (to the extent assignable and not cancelled), confidentiality and other agreements, data and other Know-How (including commercial information) that are owned by Day One or to which Day One is a party, in each case, relating to any Product and that are necessary or useful for the Exploitation of such Products, to the extent that each such contract is assignable; (iii) transfer or assign, or have transferred or assigned, to Takeda or its designee all of Day One's or its Affiliate's rights, title, and interests in and to any promotional materials, training materials, medical education materials, packaging and labeling, and all other literature or other information related to the Products and copyrights and any registrations for the foregoing; (iv) transfer or assign, or have transferred or assigned, to Takeda or its designee some or all inventory of each Product (including all final product, bulk drug substance, intermediates, works-in-process, formulation materials, reference standards, drug product clinical reserve samples, packaged retention samples, and the like) then in the possession of Day One; (v) (A) provide a one-time technology transfer to Takeda or its designee of information and materials that are necessary or reasonably useful for Takeda or its designee to Manufacture such Product in each formulation of such Product for which Takeda is granted rights under this Section 9.3, including providing reasonable assistance to Takeda or its designee in connection therewith upon request, and (B) assign or have assigned to Takeda any agreement that exclusively relates to the Manufacture or supply of such Product in the Territory, to the extent that such contract is assignable; and (vi) if, as of the effective date of such termination, Day One or its Affiliates are conducting any Clinical Trials for any Product, transfer or have transferred to Takeda or its designees the conduct of such Clinical Trials.

(b) **Assignment and Disclosure**. To the extent requested by Takeda following the termination of this Agreement, Day One will promptly upon request (and in any event within [*] after the effective date of such termination):

(i) assign and transfer to Takeda or its designee all of Day One's rights, title, and interests in and to all Assigned Agreements, other than the Sunesis License (which shall be assigned to Takeda pursuant to Section 9.3(a)); and

(ii) assign and transfer to Takeda or its designee all Assigned Know-How and Assigned Patent Rights.

(c) **Return of Confidential Information**. At the Disclosing Party's election, the Receiving Party will return (at Disclosing Party's expense) or destroy all tangible materials comprising, bearing, or containing any Confidential Information of the Disclosing Party relating to any Product that are in the Receiving Party's or its Affiliates' or sublicensees' possession or control and provide written certification of such destruction (except to the extent any information is the Confidential Information of both Parties or to the extent that the Receiving Party has the continuing right to use the Confidential Information under this Agreement); *provided* that the Receiving Party may retain one copy of such Confidential Information for its legal archives. Notwithstanding any provision to the contrary set forth in this Agreement, the Receiving Party will not be required to destroy electronic files containing such Confidential Information that are made in the ordinary course of its business information back-up procedures pursuant to its electronic record retention and destruction practices that apply to its own general electronic files and information.

**9.4 Effects of Termination of Grant Back License**. Effective as of the termination of the Grant Back License pursuant to Section 2.6: (a) all licenses and all other rights granted by Day One to Takeda under the Assigned Technology, the Licensed Intellectual Property and the Day One Developed Technology will terminate and all sublicenses granted by Takeda will also terminate; (b) the field of the exclusive license granted to Day One under Section 2.4(a) will be expanded to include the Takeda Field; (c) Day One will have, and Takeda hereby grants to Day One, effective upon such termination, a worldwide, exclusive, royalty-bearing, perpetual and irrevocable (subject to Day One's compliance with its payment obligations, to be determined as further described below, including the applicable notice and cure period), and sublicensable (through multiple tiers) license under the Know-How developed or invented by or on behalf of Takeda in the performance of activities specifically related to the Takeda Products or the Compound in the Takeda Field and all Patents Rights with a priority date after the Effective Date that Cover such Know-How, in each case to the extent Controlled by Takeda, to Exploit Takeda Products in any and all fields of use, and for a period of [*] following the date of such termination the Parties will negotiate in good faith commercially reasonable economic terms, including a notice and cure period for the breach of any payment obligations under such economic terms, with respect to the foregoing license of rights; *provided* that, if the Parties fail to reach agreement during such [*] period, such matter will be resolved in accordance with Section 9.6; (d) upon the request of any sublicensee of Takeda not then in breach of its sublicense agreement or the terms of this Agreement applicable to such sublicensee, Day One will enter into a direct license from with such sublicensee on the same terms as this Agreement, taking into account any difference in license scope, territory, and duration of the applicable sublicense grant and provided that Day One shall not be required to undertake any obligations in such direct license that are greater in scope than those set forth in this Agreement, unless Day One otherwise agrees in writing; (e) Takeda will have no further control over or decision-making authority with respect to the Development and Manufacture of Takeda Products for the use in the Takeda Field in the Territory and the Compound for use in such Takeda Products pursuant to Section 4.4 and Day One will have sole control over and decision- making authority with respect to Development and Manufacture of the Compound and the Products; (f) the JDC will terminate pursuant to Section 4.5(e); (g) Takeda will have no further control over or decision-making authority with respect to the Commercialization of Takeda Products in the Takeda Field in the Territory pursuant to Section 4.6 and Day One will have sole control over and decision-making authority with respect to the Commercialization of the Products in the Territory; (h) Takeda will have no further control over or decision-making authority with respect to the Manufacture and distribution of all clinical and commercial supplies of the Takeda Products for use in the Takeda Field and the Compound for use in the Manufacture of such Takeda Products pursuant to Section 4.7 and Day One will have sole control over and decision-making authority with respect to the Manufacturing and distribution of all clinical and commercial supplies of the Compound and the Products in the Territory; (i) Day One will have no further obligation to provide

Takeda with copies of proposed material Regulatory Submissions pursuant to Section 4.8(b); (j) Takeda will have no further responsibility for, control over, or decision-making authority with respect to all regulatory activities for the Takeda Products pursuant to Section 4.8(c) and Day One will have final decision making authority regarding all regulatory activities, including the Labeling strategy and the content of submissions with respect to the Compound and all Products; (k) Day One will have no further obligations and Takeda will have no further rights pursuant Section 4.8(d); (l) Day One's obligations under Section 4.8(f) will terminate and Takeda's rights pursuant Section 4.8(f), including Takeda's right of reference granted pursuant to Section 4.8(f); (m) the Pharmacovigilance Agreement will terminate; (n) the Parties' will have no further rights or obligations pursuant Section 4.9(b), including the obligation to exchange safety data relating to the Products and the Compound pursuant to Section 4.9(b); (o) the Parties will have no further obligation to share Labeling information and Takeda will no longer have final decision-making authority with respect to Labeling for each Takeda Product pursuant to Section 4.11; (p) each Party will have no further Know-How disclosure obligation pursuant to Section 5.2; (q) Day One will have no further obligation to keep Takeda informed of all substantive matters relating to Prosecution of the Assigned Patent Rights and to consider Takeda's comments with respect thereto pursuant to Section 5.3(a); (r) Day One will have no obligations and Takeda will have no further rights pursuant to Section 5.4, including Takeda's rights with respect to the enforcement of the Assigned Patent Rights pursuant to Section 5.4; (s) Day One will have no obligations and Takeda will have no further rights pursuant to Section 5.5, including with respect to the defense of any Third Party Action pursuant to Section 5.5; (t) Day One will have no obligations and Takeda will have no further rights pursuant to Section 5.7, including Takeda's right to review and comment on any Patent Right listing pursuant to Section 5.7; (u) Day One will have no obligations and Takeda will have no further rights pursuant Section 5.8, including Takeda's right to review and comment on Day One's Product Trademarks pursuant to Section 5.8; (v) each Party will have no further obligations pursuant Section 6.3(b), including to notify the other party of any regulatory action by any Regulatory Authority relating to any Product pursuant to Section 6.3(b); and (w) each Party will have no further obligations pursuant Section 6.3(e), including to notify the other party of any Serious Adverse Event relating to any Product pursuant to Section 6.3(e).

**9.5 Survival**. The following provisions will survive any expiration or termination of this Agreement for the period of time specified in such provision, or if not specified, then they will survive indefinitely: Article 1 (to the extent necessary for the interpretation of the other surviving Sections and Articles hereof), Article 2 (solely in the case of expiration in accordance with Section 9.1), Section 3.4, Section 5.1 (solely in the case of expiration in accordance with Section 9.1), Section 5.5 (solely in the case of expiration in accordance with Section 9.1), Section 5.7 (solely in the case of expiration in accordance with Section 9.1), Section 5.8 (solely in the case of expiration in accordance with Section 9.1), Section 6.4, Article 7, Article 8, Article 9, and Article 10. Termination of this Agreement will not relieve the Parties of any liability which accrued under this Agreement prior to the effective date of such termination nor preclude either Party from pursuing all rights and remedies it may have under this Agreement or at law or in equity with respect to any breach of this Agreement. The remedies provided in this Article 9 are not exclusive of any other remedies a Party may have in law or equity.

**9.6 Dispute Resolution**. If the Parties are unable to resolve any dispute arising out of or in connection with this Agreement (each a "**Dispute**"), either Party may, by written notice to the other, have such Dispute referred to senior executive officers designated by each Party, or their respective designees for attempted resolution by good faith negotiations within [*] after such notice is received. In such event, the Parties will cause their respective officers or their designees to meet (face-to-face or by teleconference) and be available to attempt to resolve such issue. If the Parties should resolve such Dispute, a memorandum setting forth their agreement will be prepared and signed by both Parties at either Party's request. If the Parties are unable to resolve any Dispute, either Party may submit the matter for resolution pursuant to Section 9.7.

**9.7 Litigation**. Any unresolved Dispute that was subject to Section 9.6, will be brought exclusively in a court of competent jurisdiction, federal or state, located in the State of Delaware, and in no other jurisdiction. Each Party hereby irrevocably consents to personal jurisdiction and venue in, and irrevocably agrees to service of process issued or authorized by any such court in any such action or proceeding. The Parties hereby irrevocably waive any objection that they may now have or hereafter have to the laying of venue in the federal or state courts of Delaware in any such action or proceeding, and hereby irrevocably waive and agree not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. The Parties hereby agree that any final judgment rendered by any such federal or state court of Delaware in any action or proceeding involving any Dispute, from which no appeal can be or is taken, may be enforced by the prevailing Party in any court of competent jurisdiction.

**9.8 Preliminary Injunctions**. Notwithstanding any provision to the contrary set forth in this Agreement, in the event of an actual or threatened breach of a Party's obligations under this Agreement, a Party may seek a temporary restraining order or a preliminary injunction from any court of competent jurisdiction in order to prevent immediate and irreparable injury, loss, or damage on a provisional basis.

**9.9 Patent and Trademark Disputes**. Notwithstanding any provision to the contrary set forth in this Agreement, any and all issues regarding the scope, construction, validity, and enforceability of any Patent Rights or trademark relating to a Product that is the subject of this Agreement will be determined in a court or other tribunal, as the case may be, of competent jurisdiction under the applicable patent or trademark laws of the country in which such Patent Rights or trademark rights were granted or arose.

**9.10 Confidentiality**. Any and all activities conducted under this Article 9, including any and all proceedings and decisions hereunder, will be deemed Confidential Information of each of the Parties, and will be subject to Article 8, to the extent applicable in accordance with Applicable Law.

## ARTICLE 10
## MISCELLANEOUS

**10.1 Entire Agreement; Amendment**. This Agreement, including the Exhibits and Schedules attached to and incorporated into this Agreement, sets forth the complete, final and exclusive agreement and all the covenants, promises, agreements, warranties, representations, conditions and understandings between the Parties with respect to the subject matter of this Agreement and supersedes and terminates all prior agreements and understandings between the Parties with respect to such subject matter, including the Confidentiality Agreement, provided that all "Confidential Information" disclosed or received by Day One and Takeda thereunder is deemed "Confidential Information" hereunder and subject to the terms and conditions of this Agreement. No subsequent alteration, amendment, change or addition to this Agreement will be binding upon the Parties unless reduced to writing and signed by an authorized officer of each Party.

**10.2 Governing Law**. This Agreement will be construed in accordance with, and governed in all respects by, the laws of the State of Delaware (without giving effect to principles of conflicts of laws that would require the application of any other law); provided that matters of intellectual property law will be determined in accordance with the United States federal law. The Parties hereby submit to the jurisdiction of the state courts in the State of Delaware and federal courts located in the District of Delaware, and waive any defense of inconvenient forum to the maintenance of any action or proceeding in such courts.

**10.3 Specific Performance**. Subject Section 10.2, in addition to any and all other remedies that may be available at law in the event of breach of this Agreement, the non-breaching Party will be entitled to seek specific performance of the agreements and obligations of the breaching Party hereunder and to such injunctive or other equitable relief as may be granted by a court of competent jurisdiction.

**10.4 Cumulative Remedies**. No remedy referred to in this Agreement is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to in this Agreement or otherwise available under law or in equity.

**10.5 Force Majeure**. Each Party will be excused from the performance of its obligations under this Agreement, except with respect to any payment obligations, to the extent that such performance is prevented by a force majeure event and the nonperforming Party promptly provides notice of the prevention to the other Party. Such excuse will be continued so long as the condition constituting force majeure continues and the nonperforming Party uses reasonable efforts to remove the condition. For purposes of this Agreement, force majeure will include conditions beyond the reasonable control of the Parties, including an act of God or terrorism, voluntary or involuntary compliance with any regulation, law or order of any government, war, civil commotion, labor strike or lock-out, epidemic, failure or default of public utilities or common carriers, destruction of production facilities or materials by fire, earthquake, storm or like catastrophe.

**10.6 Notices**. Any notice required or permitted to be given under this Agreement will be in writing, will specifically refer to this Agreement and will be deemed to have been sufficiently given for all purposes upon receipt if delivered (a) by first class certified or registered mail, postage prepaid, (b) international express delivery service, (c) personally or (d) via facsimile or other electronic transmission with confirmation of receipt. Unless otherwise specified in writing, the notice addresses of the Parties will be as described below.

| | |
|---|---|
| For Day One: | DOT Therapeutics-1, Inc.<br>[*] |
| With a copy to: | Cooley LLP<br>[*] |
| For Takeda: | Millennium Pharmaceuticals, Inc.<br>[*] |
| With copies to: | Millennium Pharmaceuticals, Inc.<br>[*] |

**10.7 Assignment**. Neither Party may assign or transfer this Agreement or any rights or obligations under this Agreement without the prior written consent of the other Party, except that, subject to Section 10.8, a Party may make such an assignment or transfer without the other Party's consent (a) if the assigning Party is Takeda, to Takeda's Affiliates or (b) to the successor upon the merger, consolidation, reorganization, acquisition of stock or other change of control transaction (each of the foregoing, a "**Change of Control Transaction**"), or upon a sale of assets affecting substantially all of the assets of a Party (an "**Asset Sale**"). Except in connection with a Change of Control Transaction, Day One may not assign this Agreement or any of its rights or obligations hereunder to any Affiliate, without the prior written consent of Takeda, which consent will not be unreasonably withheld, conditioned or delayed. Any permitted successor or assignee of rights or obligations under this Agreement will expressly assume performance of such rights or obligations. Any permitted assignment will be binding on the successors of the assigning Party. Any assignment or attempted assignment by either Party in violation of the terms of this Section 10.7 will be null and void.

**10.8 Performance by Affiliates**. Each of Takeda and Day One acknowledge that a Party's obligations under this Agreement may be performed by its Affiliates. Notwithstanding any delegation of obligations under this Agreement by a Party to its Affiliate, such Party will remain primarily liable and

responsible for the performance of all of its obligations under this Agreement and for causing its Affiliates to act in a manner consistent with this Agreement. Wherever in this Agreement a Party delegates responsibility to its Affiliates or local operating entities, the Parties agree that such entities will not make decisions inconsistent with this Agreement, amend the terms of this Agreement or act in breach of its terms.

**10.9 Independent Contractors**. It is understood and agreed that the relationship between the Parties is that of independent contractors and that nothing in this Agreement will be construed as creating a partnership for tax purposes or as an authorization for either Party to act as the agent for the other Party.

**10.10 Further Actions**. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

**10.11 Severability**. Each provision in this Agreement is independent and severable from the others, and no provision will be rendered unenforceable because any other provision may be invalid or unenforceable in whole or in part. If the scope of any restrictive provision in this Agreement is too broad to permit enforcement to its full extent, then such restriction will be reformed to the maximum extent permitted by law.

**10.12 Headings**. The headings for each Article and Section in this Agreement have been inserted for convenience of reference only and are not intended to limit or expand on the meaning of the language contained in the particular Article or Section.

**10.13 No Waiver**. Any delay in enforcing a Party's rights under this Agreement, or any waiver as to a particular default or other matter, will not constitute a waiver of such Party's rights to the future enforcement of its rights under this Agreement, except with respect to an express written and signed waiver relating to a particular matter for a particular period of time.

**10.14 Interpretation**. Except where the context otherwise requires, wherever used, the singular includes the plural, the plural the singular, the use of any gender applies to all genders. The word "or" has the inclusive meaning that is typically associated with the phrase "and/or"; the word "and" is used in the conjunctive sense. The term "including," "include," or "includes" means including, without limiting the generality of any description preceding such term. Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document will be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or therein), (ii) any reference to any applicable laws will be construed as referring to such laws as from time to time enacted, repealed or amended, (iii) any reference to any person will be construed to include the person's successors and permitted assigns, (iv) the words "herein", "hereof" and "hereunder", and words of similar import, will be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (v) any reference to the words "mutually agree" or "mutual written agreement" will not impose any obligation on either Party to agree to any terms relating thereto or to engage in discussions relating to such terms except as such Party may determine in such Party's sole discretion, (vi) all references to Sections, Exhibits or Schedules will be construed to refer to Sections, Exhibits and Schedules to this Agreement, (vii) the word "days" means calendar days unless otherwise specified, and (viii) the words "copy" and "copies" and words of similar import when used in this Agreement include, to the extent available, electronic copies, files or databases containing the information, files, items, documents or materials to which such words apply.

**10.15 No Strict Construction**. Each Party represents that it has been represented by legal counsel in connection with this Agreement and acknowledges that it has participated in the drafting hereof. In interpreting and applying the terms and provisions of this Agreement, the Parties agree that no presumption will apply against the Party which drafted such terms and provisions.

**10.16 Counterparts**. This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which together will constitute one (1) and the same instrument. For purposes of executing this Agreement, a facsimile copy of this Agreement, or .pdf copy, including the signature pages, will be deemed an original.

[*Signature page follows*]

**IN WITNESS WHEREOF** the Parties have executed this Agreement in duplicate originals by their duly authorized officers as of the Effective Date.

| **DOT THERAPEUTICS-1, INC.** | | **MILLENNIUM PHARMACEUTICALS, INC.** | |
|---|---|---|---|
| By: | /s/ Julie Papanek Grant | By: | /s/ [*] |
| Name: | Julie Papanek Grant | Name: | [*] |
| Title: | Chief Executive Officer | Title: | [*] |

*[Signature Page to Asset Transfer and License Agreement]*

**Schedule 1.7**
**Assigned Agreements**

**Schedule 1.9**
**Assigned Know-How**

**Schedule 1.10**
**Assigned Patent Rights**

**Schedule 1.10**
**Assigned Regulatory Submissions**

**Schedule 1.58**
**Licensed Know-How**

**Schedule 1.59**
**Licensed Patents**

**Schedule 1.96**
**Takeda Field**

**Schedule 2.1(e)**
**Assigned Inventory**

**Schedule 2.1**
**Bill of Sale**

**Schedule 2.2**
**Patent Right Assignment**

**Schedule 2.4(c)**
**Assays for Determination of Target Selectivity**

**Schedule 4.1**
**Transfer Plan**

**Schedule 4.15**
**Patent Assignments**

**Schedule 4.14(a)**
**Sunesis License Payment Obligations**

**Schedule 8.6**
**Publications**

**Exhibit A**
**Stock Issuance Agreement**

**CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [*], HAS BEEN OMITTED BECAUSE IT IS NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE AND CONFIDENTIAL.**

# LICENSE AGREEMENT FOR RAF

This LICENSE AGREEMENT FOR RAF (the "Agreement"), effective as of December 16, 2019 (the "Effective Date"), is made by and between Sunesis Pharmaceuticals, Inc., a Delaware corporation, having a principal place of business at 395 Oyster Point Boulevard, Suite 400, South San Francisco, CA 94080 ("Sunesis"), and DOT Therapeutics-1, Inc., a Delaware corporation, having a principal place of business at 2765 Sand Hill Road, Menlo Park, CA 94025 ("DOT-1"). Sunesis and DOT-1 are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

## BACKGROUND

A. Sunesis has developed proprietary technology and know-how for the discovery and optimization of small molecules that bind to enzyme targets and protein-protein interfaces, with special expertise towards kinases.

B. On December 16, 2019, Millennium transferred Millennium's, and its Affiliates', rights to certain Licensed Products to DOT-1 (such transaction, the "Program Transfer"). As part of the Program Transfer, Millennium Pharmaceuticals, Inc. ("Millennium") assigned to DOT-1 that certain Amended and Restated License Agreement for Raf between Millennium and Sunesis, dated December 13, 2019 (the "Raf Agreement").

C. Coincident with the completion of the Program Transfer, DOT-1 and Sunesis now desire to amend and restate the Raf Agreement in its entirety to incorporate certain terms agreed between the Parties, on the terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the covenants, conditions and undertakings hereinafter set forth, it is agreed by and between the Parties as follows:

## ARTICLE 1
## DEFINITIONS

As used herein, the following terms will have the meanings set forth below:

1.1 "Affiliate" of a Person shall mean any corporation or other business entity that during the Term of this Agreement controls, is controlled by or is under common control with such Person but only for so long as such entity controls, is controlled by, or is under common control with such Person. With respect to a particular entity, "control" shall mean the ownership directly or indirectly of fifty percent (50%) or more of the stock entitled to vote for the election of directors, and for nonstock organizations, of the equity interests entitled to control the management of such entity.

1.2 “BLA” shall mean a Biologics License Application (or its equivalent), as defined in the U.S. Food, Drug and Cosmetic Act and the regulations promulgated thereunder, or any corresponding or similar application, registration or certification in any jurisdiction for marketing authorization of a biologic product.

1.3 “CDA” means the Mutual Confidential Disclosure Agreement by and between Sunesis and DOT-1 dated June 9, 2019.

1.4 “Collaboration Technology” means the Collaboration Patents and the Collaboration Know-How.

1.4.1 “Collaboration Patents” means all DOT-1 Collaboration Patents, Joint Collaboration Patents and Sunesis Collaboration Patents.

1.4.2 “Collaboration Know-How” means all DOT-1 Collaboration Know- How, Joint Collaboration Know-How and Sunesis Collaboration Know-Know.

1.5 “Combination Product” shall mean any of (i) a Licensed Product that incorporates two or more active drug substances including a Licensed Compound, or (ii) a Reverted Licensed Product that incorporates two or more active drug substances including a Reverted Compound; in each case where at least one of the active drug substances is not a Licensed Compound or Reverted Compound, respectively.

1.6 “Commercially Reasonable and Diligent Efforts” shall mean (a) the level of effort and resources normally used by a Party for a product or compound owned or controlled by it, which is of similar market potential and at a similar stage in its development or product life, taking into account, without limitation, with respect to a product issues of safety and efficacy, product profile, the proprietary position of the product, the then current competitive environment for the product and the likely timing of the product’s entry into the market, the regulatory environment of the product, and other relevant scientific, technical and commercial factors (such product, a “Similar Product”) or (b) if the relevant Party does not have a Similar Product, then the level of effort and resources normally used by pharmaceutical companies of similar size and resources in their reasonable, good faith efforts to accomplish such objective, activity, or decision with respect to Similar Products. Notwithstanding the foregoing, to the extent that the performance of a Party’s responsibilities hereunder is adversely affected by the other Party’s failure to perform its responsibilities hereunder, such Party shall not be deemed to have failed to use its Commercially Reasonable and Diligent Efforts in performing such responsibilities.

1.7 “Confidential Information” shall mean, with respect to a Party, all information (and all tangible and intangible embodiments thereof), which is owned or controlled by such Party, and is or was disclosed by such Party to the other Party pursuant to the CDA or this Agreement. Notwithstanding the foregoing, Confidential Information of a Party shall not include information which, and only to the extent, the receiving Party can establish by written documentation (a) has been generally known prior to disclosure of such information by the disclosing Party to the receiving Party; (b) has become generally known, without the fault of the receiving Party, subsequent to disclosure of such information by the disclosing Party to the receiving Party; (c) has been received by the receiving Party at any time from a source, other than the disclosing Party,

rightfully having possession of and the right to disclose such information free of confidentiality obligations; (d) has been otherwise known by the receiving Party free of confidentiality obligations prior to disclosure of such information by the disclosing Party to the receiving Party; or (e) is independently developed without reference to or use of the Confidential Information of the disclosing Party. For clarity, except as otherwise expressly provided in this Agreement, Joint Collaboration Technology shall be deemed Confidential Information of both DOT-1 and Sunesis; DOT-1 Collaboration Technology and Development Technology shall, be deemed Confidential Information solely of DOT-1; and the Sunesis Collaboration Technology and Sunesis Licensed Technology shall be deemed Confidential Information solely of Sunesis.

1.8 "Control" or "Controlled" shall mean, with respect to any Patent Rights or Know- how and with respect to any Person, possession (whether by ownership or license, other than a license granted pursuant to this Agreement) by such Person or its Affiliate of the ability to grant the licenses or sublicenses as provided for herein without violating the terms of any agreement or other arrangement with any Third Party.

1.9 "Development" shall mean all research, development and regulatory activities regarding the Licensed Products. "Development" shall include all activities related to research, optimization and design of the appropriate molecule and identification of back-ups, preclinical testing, test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, qualification and validation, quality assurance/quality control, clinical studies, manufacturing clinical supplies, regulatory affairs, statistical analysis and report writing, technology transfer, market research and development, and all other pre-approval and related post-approval activities. When used as a verb, "Develop" shall mean to engage in Development.

1.10 Reserved.

1.11 Reserved.

1.12 "Development Technology" shall mean any Know-How that is made or developed by or under authority of DOT-1 or its Affiliates, whether alone or jointly with others, in the course of performing any activity under this Agreement that is directed to the Raf Target or directly related to the Development, manufacturing or commercialization of a Licensed Compound or Licensed Product, and all Patent Rights that claim or cover any such Know-How.

1.13 "Diligence Summary" shall mean, with respect to a particular Product, a summary of Development and commercialization activities with respect to such Product, that (i) were performed by the reporting Party or its Third Party collaborators in the previous [*] period (or shorter period from the prior Diligence Summary, if applicable), and (ii) as of the date of the Diligence Summary, are planned in good faith for the following [*] period. For clarity, it is understood and acknowledged that in providing a Diligence Summary, a Party shall not be required to disclose scientific results, specific research activities or the identity of any Third Party collaborator or potential collaborator.

1.14 “DOT-1 Collaboration Technology” shall mean all DOT-1 Collaboration Patents and DOT-1 Collaboration Know-How.

1.14.1 “DOT-1 Collaboration Patents” shall mean DOT-1’s interest in those Patent Rights set forth on or claiming priority to those listed on, Exhibit 1.14. Notwithstanding the foregoing, DOT-1 Collaboration Patents shall in all cases exclude Joint Collaboration Patents.

1.14.2 “DOT-1 Collaboration Know-How” shall mean DOT-1’s interest in all Know-How that was made or developed after August 27, 2004 but prior to the Effective Date and is specifically related to the Raf Target or to the discovery, research, or development of Licensed Compounds or Licensed Products; such Know-How is set forth on Exhibit 1.14. Notwithstanding the foregoing, DOT-1 Collaboration Know-How shall in all cases exclude Joint Collaboration Know-How.

1.15 “Field” shall mean the treatment, prevention or diagnosis of disease in humans and animals.

1.16 “Governmental Authority” shall mean any multi-national, federal, state, local, municipal or other government authority of any nature (including any governmental division, prefecture, subdivision, department, agency, bureau, branch, office, commission, council, court or other tribunal).

1.17 “Gross Sales” shall mean the gross amount [*].

1.18 “Joint Collaboration Technology” shall mean all Joint Collaboration Patents and Joint Collaboration Know-How.

1.18.1 “Joint Collaboration Patents” shall mean all Patent Rights set forth on, or claiming priority to those listed on, Exhibit 1.18.

1.18.2 “Joint Collaboration Know-How” shall mean all Know-How that was made or developed after August 27, 2004 but prior to March 31, 2011 in the course of activities specifically related to the Raf Target or to the discovery, research, or development of Licensed Compounds or Licensed Products that is set forth on Exhibit 1.18. Notwithstanding the foregoing, Joint Collaboration Know-How shall in all cases exclude Sunesis Collaboration Patents.

1.19 “Know-How” shall mean any data, inventions, invention disclosures, methods, proprietary information, processes, techniques, technology, or material (including biological or other materials).

1.20 “Licensed Compounds” shall mean (i) BIIB024 (also referred to as TAK-580), and (ii) all other compounds claimed or covered by a Collaboration Patent that are directed to the Raf Target (including Collaboration Patents listed in Exhibits 1.14, 1.18 and 1.37 attached hereto, which have been updated as of the Effective Date), (iii) all other compounds claimed or covered by an invention disclosure within the Collaboration Know-How that are directed to the Raf Target, and (iv) all salts, prodrugs, esters, metabolites, solvates, stereoisomers and polymorphs of any of the foregoing.

1.21 “Licensed Product” shall mean a pharmaceutical preparation for sale by prescription, over-the-counter, or any other method for all uses in humans or animals, which incorporates one or more Licensed Compounds as an active drug substance, but excluding Reverted Licensed Products. It is understood that Licensed Products containing different active ingredient(s) (i.e., a different active ingredient or an additional active ingredient) or a different formulation shall be deemed different “Licensed Products”.

1.22 “NDA” shall mean a New Drug Application (or its equivalent), as defined in the U.S. Food, Drug and Cosmetic Act and the regulations promulgated thereunder, or any corresponding or similar application, registration or certification in any jurisdiction for marketing authorization of a product.

1.23 “Net Consideration” shall mean, with respect to the sale of a PRV by DOT-1 or its Affiliate or Sublicensee (the “Seller”), an amount equal to [*].

1.24 “Net Sales” shall mean, with respect to a Product, Gross Sales less applicable Sales Returns and Allowances.

[*].

1.25 “Patent Rights” shall mean all patents and patent applications in any country in the world, including any continuations, continuations-in-part, divisionals, provisionals or any substitute applications, any patent issued with respect to any such patent applications, any reissue, reexamination, renewal or extension (including any supplemental protection certificate) of any such patent, and any confirmation patent or registration patent or patent of addition based on any such patent.

1.26 “Person” shall mean any natural person, corporation, general partnership, limited partnership, joint venture, proprietorship or other business organization or a Governmental Authority.

1.27 “Phase I” shall mean human clinical trials, the principal purpose of which is the preliminary evaluation of safety in healthy individuals as more fully defined in 21 C.F.R. §312.21(a) or similar clinical study in a country other than the United States. An initial study in patients where the primary purpose is the preliminary evaluation of safety will be considered a Phase I study.

1.28 “Phase II” shall mean human clinical trials conducted on a limited number of patients for the primary purpose of evaluation of both clinical efficacy and safety, or to obtain a preliminary evaluation of the dosage regimen, as more fully defined in 21 C.F.R. §312.21(b).

1.29 “Phase III” shall mean human clinical trials, the principal purpose of which is to establish substantial evidence of both safety and efficacy in patients with the disease or condition being studied, as more fully defined in 21 C.F.R. §312.21(c) or similar clinical study in a country other than the United States. Phase III shall also include any other human clinical trial intended to serve as a pivotal trial to support the submission of an application for regulatory approval.

1.30 “Product” shall mean a Licensed Product or Reverted Licensed Product, as applicable.

1.31 “PRV” shall mean a rare pediatric disease priority review voucher granted by the FDA with respect to a Licensed Product pursuant to Section 529 of the Federal Food Drug and Cosmetic Act or the successor thereto.

1.32 “Raf Target” shall mean the human Raf protein together with the Raf protein family members Raf-1, A-Raf, B-Raf and C-Raf.

1.33 “Regulatory Approval” shall mean approval of the health regulatory agency in a country (FDA in the U.S. and comparable authority outside the U.S.) necessary for the marketing and sale of a product in the applicable country. As used herein, “Regulatory Approval” shall not include pricing or reimbursement approval.

1.34 “Reverted Compound” shall mean, with respect to a Reverted Licensed Product, any Licensed Compound included in such Reverted Licensed Product.

1.35 “Sales Returns and Allowances” shall mean, with respect to a specific Product, the sum of (a) and (b), where: (a) [*]; and (b) [*].

1.36 “Sublicensee” shall mean a Third Party expressly licensed by a Party or its Affiliate to make, use, import, offer for sale or sell a Product. The term “Sublicensee” shall not include distributors (i.e., a Third Party who purchases Product from a Party for resale).

1.37 “Sunesis Collaboration Technology” shall mean all Sunesis Collaboration Patents and Sunesis Collaboration Know-How.

1.37.1 “Sunesis Collaboration Patents” shall mean (a) those Patent Rights set forth on or claiming priority to those listed on, Exhibit 1.37. Notwithstanding the foregoing, Sunesis Collaboration Patents shall in all cases exclude Joint Collaboration Patents.

1.37.2 “Sunesis Collaboration Know-How” shall mean any Know-How made or developed solely by or under authority of personnel of Sunesis or any of its controlled Affiliates, after August 27, 2004 but prior to March 31, 2011, in the course of activities specifically related to the Raf Target or to the discovery, research, or development of Licensed Compounds or Licensed Products. Notwithstanding the foregoing, Sunesis Collaboration Know-How shall in all cases exclude Joint Collaboration Know-How.

1.38 “Sunesis Licensed Technology” shall mean Sunesis Licensed Patents and Sunesis Licensed Know-How. For clarity, the Sunesis Licensed Technology shall include Sunesis’ interest in the Joint Collaboration Technology and the Sunesis Collaboration Technology.

1.38.1 “Sunesis Licensed Patents” shall mean (i) Sunesis’s interest in Collaboration Patents, (ii) all Patent Rights Controlled by Sunesis as of March 31, 2011 or the Effective Date that claim or cover the Raf Target, Licensed Compounds or Licensed Products, and (iii) all Patent Rights that arise during the Term that claim or cover any Know- How Controlled by Sunesis (a) as of March 31, 2011 that relates to the Raf Target

or a Licensed Compound or Licensed Product or (b) as of the Effective Date that was made or developed in the course of activities specifically related to the research or development of Licensed Compounds or Licensed Products. The Sunesis Licensed Patents as of the Effective Date are listed in Exhibit 1.38.

1.38.2 "Sunesis Licensed Know-How" shall mean (i) Sunesis Collaboration Know-How, (ii) Sunesis's interest in Joint Collaboration Know-How, and (iii) any Know-How Controlled by Sunesis (a) as of March 31, 2011 that relates to the Raf Target, Licensed Compound or Licensed Product or (b) as of the Effective Date that was made or developed in the course of activities specifically related to the research or development of Licensed Compounds or Licensed Products.

1.39 "Target Selective" shall mean, when used to describe a chemical compound with respect to the Raf Target, that such compound exhibits [*] cell-based assay, and [*] (i) [*] enzyme assay ([*]) or (ii) [*]. For the purposes of the foregoing, the relevant cell-based and enzyme assays shall be as specified in Exhibit 1.39 and the [*] in (ii) shall be measured in the same enzyme assay as (i).

1.40 "Third Party" shall mean any person or entity other than Sunesis and DOT-1, and their respective Affiliates.

1.41 "Valid Claim" shall mean (i) a claim of an issued and unexpired patent (or the equivalent in a supplementary protection certificate), including any patent term extensions of such patent, which has not lapsed or become abandoned or been declared invalid or unenforceable by a court of competent jurisdiction or an administrative agency from which no appeal can be or is taken or (ii) a claim of a pending patent application, filed in good faith, which claim shall not have been canceled, withdrawn, abandoned or rejected by an administrative agency from which no appeal can be taken; provided that no more than [*] has passed since the filing date for such patent application.

1.42 Construction. In construing this Agreement, unless expressly specified otherwise:

1.42.1 references to Sections, Articles and Exhibits are to sections and articles of, and exhibits to, this Agreement;

1.42.2 except where the context otherwise requires, use of any gender includes any other gender, and use of the singular includes the plural and vice versa;

1.42.3 any list or examples following the word "including" shall be interpreted without limitation to the generality of the preceding words;

1.42.4 except where the context otherwise requires, the word "or" is used in the inclusive sense; and

1.42.5 all references to "dollars" or "$" herein shall mean U.S. Dollars.

1.43 Additional Terms. In addition to the foregoing, the following terms shall have the meaning defined in the corresponding Section below:

| Defined Term | Section |
|---|---|
| Agreement | Preamble |
| Annual Net Sales | 6.3.1 |
| ATLA | 5.1.2 |
| Competing Program | 15.3 |
| Controlling Party | 9.3.4 |
| Cooperating Party | 9.3.4 |
| Diligence Failure | 8.2.1 |
| DOT-1 | Preamble |
| Effective Date | Preamble |
| Indemnitee | 12.3 |
| Indemnitor | 12.3 |
| Indication | 6.2.2(b) |
| Infringement Action | 9.3.4 |
| Liabilities | 12.1 |
| Millennium | Background |
| Millennium Option | 8.2.2 |
| Millennium Option Period | 8.2.2 |
| Millennium Reversion | 5.1.2 |
| Millennium Reversion Notice | 5.1.2 |
| Option Notice | 8.2.2 |
| Other DOT-1 Technology | 5.1.3 |
| Other Patent Rights | 9.2.2 |
| Party or Parties | Preamble |
| Program Transfer | Background |
| Prosecution | 9.2.2 |
| Raf Agreement | Background |
| Reverted Licensed Product | 8.2.1 and 8.2.2 |
| Statutory Exclusivity | 6.3.4 |
| Subject Infringement | 9.3.1 |
| Sunesis | Preamble |
| Sunesis Reversion License | 5.1.3 |
| Term | 13.1.2 |
| Transaction Documents | 11.3.1 |

## ARTICLE 2
## LICENSED PRODUCT DEVELOPMENT

2.1 Development by DOT-1. Commencing on the Effective Date, DOT-1 shall be responsible for undertaking a development program aimed at ultimately seeking Regulatory Approval for Licensed Products.

2.2 Diligence. DOT-1 shall use Commercially Reasonable and Diligent Efforts to Develop and obtain Regulatory Approvals for Licensed Products in the Field.

2.3 Regulatory Matters. DOT-1 shall file and be the owner of all regulatory filings for Licensed Compounds or Licensed Products developed pursuant to this Agreement, including all NDAs and Regulatory Approvals, unless otherwise agreed by the Parties.

## ARTICLE 3
## LICENSED PRODUCT COMMERCIALIZATION

3.1 Commercialization Rights. DOT-1 shall be responsible for the establishment and implementation of the strategy, plans and budgets for marketing and promotion of the Licensed Products.

3.2 Diligence. After receipt of Regulatory Approval for a particular Licensed Product in a particular country, DOT-1 shall use Commercially Reasonable and Diligent Efforts to obtain all necessary pricing or reimbursement approvals for such Licensed Product in the such country and to commercialize such Licensed Product in the Field in such country.

## ARTICLE 4
## RESERVED

## ARTICLE 5
## LICENSES

5.1 Development and Commercialization Licenses.

5.1.1 License under the Sunesis Licensed Technology to Licensed Products. Subject to the terms and conditions of this Agreement, Sunesis hereby grants to DOT-1 a worldwide, exclusive license under the Sunesis Licensed Technology, with the right to grant and authorize sublicenses as provided in Section 5.2, to Develop, make, have made, use, import, offer for sale, sell and otherwise exploit Licensed Compounds and Licensed Products in the Field.

5.1.2 Millennium Reversion. DOT-1 represents and warrants to Sunesis that DOT-1 obtained its interest in the DOT-1 Collaboration Technology, Joint Collaboration Technology and the Raf Agreement from Millennium pursuant to the Program Transfer under that certain Asset Transfer and License Agreement dated December 16, 2019 (the "ATLA"), and that, in the event of termination of the ATLA, Millennium has (as of the Effective Date) certain rights under the ATLA to receive an assignment of or license under the DOT-1 Collaboration Technology, Joint Collaboration Technology Development Technology, Other DOT-1 Technology, and related assets (including DOT-1's interest in this Agreement) for purposes of developing and commercializing Licensed Compounds and Licensed Products. Accordingly, any and all rights that Sunesis has with respect to Reverted Licensed Products shall be secondary to Millennium's reversion rights with respect to such products under the ATLA. If the ATLA terminates and Millennium receives, or exercises its right to receive, an assignment of this Agreement as well as an assignment of or license under the DOT-1 Collaboration Technology, Joint Collaboration Technology, Development Technology and/or Other DOT-1 Technology to develop, make, have made, use, import, offer for sale, sell and otherwise exploit such Reverted Licensed Product (collectively, a "Millennium Reversion"), then (a) DOT-1 will provide Sunesis with prompt written notice of such Millennium Reversion ("Millennium Reversion Notice") and (b) the license granted to Sunesis in Section 5.1.3 shall not be exercisable, and such Licensed

Product shall not become a Reverted Licensed Product, in each case at such time; provided that the license set forth in Section shall apply in the event that a Licensed Product subsequently becomes a Reverted Licensed Product as set forth in Section 8.2 after such Millennium Reversion occurs. For clarity, the license granted to Sunesis in Section 5.1.3 shall be exercisable and the applicable Licensed Product shall become a Reverted Licensed Product, in each case without a prior Millennium Reversion, if Millennium exercises the Millennium Option to waive its rights to the Millennium Reversion as contemplated by Section 8.2.2.

5.1.3 License for Reverted Licensed Products. Subject to the terms and conditions of this Agreement (including Sections 5.1.1 and 5.1.2 above and Section 8.2), with respect to each Reverted Licensed Product, DOT-1 hereby grants to Sunesis a worldwide, exclusive license under DOT-1's interest in the DOT-1 Collaboration Technology, Joint Collaboration Technology, Development Technology and other Patent Rights and Know How in existence and owned by DOT-1 as of the date the relevant Licensed Product becomes a Reverted Licensed Product ("Other DOT-1 Technology"), with the right to grant and authorize sublicenses as provided in Section 5.2, to develop, make, have made, use, import, offer for sale, sell and otherwise exploit such Reverted Licensed Product in the Field (the "Sunesis Reversion License"). It is understood and acknowledged that the licenses granted with respect to DOT-1 Collaboration Technology, Development Technology and Other DOT-1 Technology in this Section 5.1.3 extend solely to that technology that is being used by or on behalf of DOT-1 or its Affiliate or Sublicensee in the development or commercialization of that Reverted Licensed Product as of the date of such reversion to Sunesis, and solely to the extent necessary for Sunesis to continue development and commercialization of such Reverted Licensed Product in the form in which such Reverted Licensed Product existed as of the date of such reversion to Sunesis. For purposes of the Sunesis Reversion License, the Field shall exclude the prevention, diagnosis and treatment of Cardiofaciocutaneous Syndrome, giant congenital melanocytic nervus, Noonan Syndrome, and Noonan Syndrome with multiple lentigines, solely in the event that the Sunesis Reversion License goes into effect without a prior Millennium Reversion and solely to the extent that Millennium retains right to such indications as of the date that the Sunesis Reversion License become effective.

5.2 Grant of Sublicenses. Within a reasonable period of time following grant of any sublicense, to the extent sublicensing is permitted under Section 5.1, the sublicensing Party shall provide the other Party with a summary of such sublicense, including the identity of the Sublicensee (including any Affiliate) and the rights granted with respect thereto for each product and territory, sufficient to allow such other Party to verify any amounts then or subsequently due under Article 6 below; provided that such summary may redact confidential information that the sublicensing Party is reasonably prohibited from disclosing under the sublicense agreement. Any sublicense granted under this Section 5.2 shall be consistent with all of the terms and conditions of this Agreement, and subordinate thereto, and the sublicensing Party shall remain responsible to the other Party for the compliance of each such Sublicensee with the obligations due under this Agreement.

5.3 Covenants with Respect to Compounds in the Field.

5.3.1 Sunesis Covenant for Raf Target. During the Term of this Agreement, Sunesis represents, warrants and agrees that it shall not, alone or through any Third Party, and shall ensure that its Affiliates do not, market, sell or promote any pharmaceutical compound that is

Target Selective against the Raf Target, other than as permitted under Section 8.2 and Section 15.3 (provided that Sunesis complies with the obligations in such Section 15.3). Notwithstanding the foregoing, Sunesis shall not be prohibited from collaborating with a Third Party on the development and commercialization of chemical compounds in-licensed from or controlled by such Third Party against the Raf Target.

5.4 No Other Rights; No Implied Licenses. Only the licenses granted or retained pursuant to the express terms of this Agreement shall be of any legal force or effect. No other license rights shall be created by implication, estoppel or otherwise.

## ARTICLE 6
## PAYMENTS

6.1 Upfront Fee. DOT-1 shall pay to Sunesis the following amounts within thirty (30) days following the Effective Date: $2,000,000.

6.2 Development Milestones.

6.2.1 Development Milestone Payments.

(a) DOT-1 will pay Sunesis [*].

(b) With respect to each Licensed Product, DOT-1 shall pay to Sunesis on a Licensed Product-by-Licensed Product basis the following amounts within [*] following the first achievement by DOT-1, its Affiliates or Sublicensees, as the case may be, of each of the following milestones with respect to such Licensed Product:

| | Payment Amount | |
|---|---|---|
| **Development Milestones** | **1st Indication** | **2nd Indication** |
| [*] | [*] | [*] |
| [*] | [*] | [*] |
| [*] | [*] | [*] |
| [*] | [*] | [*] |
| [*] | [*] | [*] |
| [*] | [*] | [*] |
| [*] | [*] | [*] |

Such milestone payments shall be non-refundable and non-creditable against other amounts due Sunesis hereunder. [*].

6.2.2 Certain Additional Terms.

(a) Licensed Product-by-Licensed Product Milestones. It is understood that, subject to Section 6.2.2(b), the payments under this Section 6.2 shall be due only once with respect to each Licensed Product; provided that the payments under Section 6.2.1(a) shall be due only with respect to consideration for the first sale of each PRV received by DOT-1 or its Affiliate or Sublicensee.

(b) Multiple Indications. With respect to a particular Licensed Product, if such Licensed Product is developed for a second Indication in a separate disease, it is understood that the payments for the Development Milestones set forth in Section 6.2.1(b) will become due and payable at the time such Licensed Product achieves such Development Milestone for such second Indication; provided, that the amounts due above for such second Indication will be the lower amounts reflected for such Indications in the right most column of the table under Section 6.2.1(b) above. As used herein "Indication" shall mean a disease or condition for which approval for use of a Licensed Product can be sought from the FDA or a regulatory authority or agency of a country other than the United States with responsibilities comparable to those of the FDA. Notwithstanding the foregoing, varying forms or degrees of severity of the same disease shall be considered the same Indication, even if they require separate approvals from the FDA or other regulatory authority or agency. For the avoidance of doubt, in the field of cancer, different tumor tissue types shall be considered different Indications.

(c) Discontinued Licensed Products. If DOT-1 ceases all clinical development of a particular Licensed Product, after having made one or more of the payments due under Section 6.2.1(b) above on the achievement of a particular milestone by such Licensed Product, there shall be no payment due upon the accomplishment of that same milestone with respect to the next Licensed Product to achieve such milestone.

(d) Accrued Milestones. If any of the development milestones 2-7 for a Licensed Product under Section 6.2.1(b) above is achieved with respect to such Licensed Product before development milestone 1 under Section 6.2.1(b) for such Licensed Product, then the milestone payment associated with development milestone 1 shall then also be due with respect to such Licensed Product upon the first achievement of any of milestones 2-7. Additionally, if any of the development milestones 5-7 for a Licensed Product is achieved with respect to such Licensed Product before the corresponding development milestone 2-4 for such Licensed Product in the same territory (meaning, as applicable, the U.S., EMEA, or Japan), then the applicable milestone payment associated with that development milestone 2-4 for that territory shall also be due with respect to such Licensed Product upon the achievement of such development milestone 5-7.

6.2.3 Reports; Payments. Within [*] of the occurrence of any event which would trigger a milestone payment according to Section 6.2.1(b), DOT-1 shall inform Sunesis of such occurrence. The corresponding payment shall be due [*] after the occurrence of such event.

6.3 Royalties on Annual Net Sales of Licensed Products.

6.3.1 Licensed Products Generally. Subject to Sections 6.3.3 and 6.3.4, DOT-1 shall pay to Sunesis a royalty on Net Sales by DOT-1, its Affiliates and their Sublicensees of Licensed Products on a Licensed Product-by-Licensed Product basis, equal to the percentage of such Net Sales set forth below:

| **Annual Net Sales** | Royalty on Net Sales |
|---|---|
| Portion of Annual Net Sales of such Licensed Product up to [*]: | [*] |
| Portion of Annual Net Sales of such Licensed Product over [*]: | [*] |

For purposes of the foregoing, "Annual Net Sales" shall mean, for a particular Licensed Product, the worldwide Net Sales of such Licensed Product for the particular calendar year.

6.3.2 Reserved.

6.3.3 Third Party Patents.

(a) If: (i) a Valid Claim of a Third Party should be in force in any country during the Term of this Agreement covering the practice of the Sunesis Licensed Technology as licensed to DOT-1 under Section 5.1 with respect to the manufacture, use or sale of any Licensed Product, (ii) it should prove in DOT-1's reasonable judgment, after consultation with Sunesis, impractical or impossible for DOT-1 to commercialize such Licensed Product without obtaining a royalty bearing license from such Third Party under such Valid Claim in said country (with such agreement not to be unreasonably withheld or delayed), and (iii) the royalty paid to such Third Party is directed to the practice of rights granted to DOT-1 under Section 5.1 with respect to such Licensed Product, then DOT-1 shall be entitled to a credit against the royalty payments due under the other provisions of this Section 6.3 with respect to the same Licensed Product in such country of an amount equal to [*] of the royalty paid to such Third Party for such Licensed Product in such country, arising from the practice of such Sunesis Licensed Technology with respect to the manufacture, use or sale of the Licensed Product in said country, with such credit not to exceed [*] of the royalty otherwise due under this Agreement for such Licensed Product in such country.

(b) If: (i) a Valid Claim of a Third Party should be in force in any country during the Term of this Agreement covering the practice of the DOT-1 Collaboration Technology, Joint Collaboration Technology, Development Technology or Other DOT-1 Technology licensed to Sunesis under Section 5.1.3, in each case with respect to the manufacture, use or sale of any Reverted Licensed Product, (ii) it should prove in Sunesis's reasonable judgment, after consultation with Millennium, impractical or impossible for Sunesis to commercialize such Reverted Licensed Product without obtaining a royalty bearing license from such Third Party under such Valid Claim in said country (with such agreement not to be unreasonably withheld or delayed), and (iii) the royalty paid to such Third Party is directed to the practice of rights granted to Sunesis under Section 5.1.3 with respect to such Reverted Licensed Product, then Sunesis shall be entitled to a credit against the royalty payments due under Section 6.4 with respect to the same Reverted Licensed Product in such country of an amount equal to [*] of the royalty paid to such Third Party for such Reverted Licensed Product in such country, arising from the practice of the intellectual property described above with respect to the manufacture, use or sale of the Reverted Licensed Product in said country, with such credit not to exceed [*] of the royalty otherwise due under this Agreement for such Reverted Licensed Product in such country.

6.3.4 Royalty Reduction. The royalty rates set forth in Sections 6.3.1 used to calculate royalties payable on Net Sales of a Licensed Product in a country shall be reduced by [*] during any portion of the applicable period under Section 6.5 in which (a) no Valid Claim of the Sunesis Licensed Patents Covers the sale or use of such Licensed Product in such country and (b) such Licensed Product is not protected under any statutory exclusivity granted by a Governmental Authority ("Statutory Exclusivity") in such country, including orphan drug exclusivity granted by the FDA.

6.4 Royalties on Net Sales of Reverted Licensed Products. Sunesis shall pay DOT-1 royalties, at a royalty rate equal to the royalty rate provided under Section 6.3.1, with respect to Net Sales of Reverted Licensed Products by Sunesis, its Affiliates and their Sublicensees; provided, however, that such royalty rate shall be reduced by [*] with during any portion of the applicable period under clause (ii) in Section 6.5.1 in which (a) no Valid Claim of the DOT-1 Collaboration Patents, Joint Collaboration Patents, Development Technology or Other DOT-1 Technology Covers the sale or use of such Reverted Licensed Product in such country and (b) such Reverted Licensed Product is not protected under any Statutory Exclusivity in such country.

6.5 Royalty Term.

6.5.1 The royalties due pursuant to Section 6.3 and Section 6.4 above shall be payable on a country-by-country and Product-by-Product basis commencing on the first commercial sale in a country and continuing until the later of: (i) the expiration of the last Valid Claim of (a) the Sunesis Licensed Patents Covering the sale or use of the relevant Licensed Product in such country or (b) the Joint Collaboration Patents, DOT-1 Collaboration Patents, Development Technology or Other DOT-1 Technology Covering the sale or use of the relevant Reverted Licensed Product in such country, (ii) the expiration of the last Statutory Exclusivity pertaining to such Product in such country or (iii) the tenth ($10^{th}$) anniversary of the first commercial sale of such Product in such country.

6.5.2 DOT-1 acknowledges that it will continue to benefit from its license under, and the transfer to DOT-1 of certain elements of, the Sunesis Licensed Technology, and DOT-1's own development of Know-How derived from the practice of such Sunesis licenses and DOT-1's use of such Sunesis Licensed Technology, even after the expiration of all Patent Rights that claim a Licensed Product in a particular country. Sunesis acknowledges that it will continue to benefit from its license under certain elements of, the DOT-1 Collaboration Technology, Joint Collaboration Technology, Development Technology and Other DOT-1 Technology, and Sunesis' own development of Know-How derived from the practice of such licenses and Sunesis' use of such licensed technology, even after the expiration of all Patent Rights that claim a Reverted Licensed Product in a particular country. The Parties acknowledge that such structure is more convenient to the Parties, facilitates the payment of compensation between the Parties for access to Know How and reduces accounting burdens on the Parties. Accordingly, the Parties have agreed to apply the royalty structure as provided in this Article 6.

**ARTICLE 7**
**PAYMENTS, BOOKS AND RECORDS**

7.1 Royalty Reports and Payments. After the first sale of a Product on which royalties are payable by a Party hereunder, such Party shall make quarterly written reports to the other Party within [*] after the end of each calendar quarter, stating in each such report, separately the number, description, and aggregate Net Sales, by territory, of each such Product sold during the calendar quarter upon which a royalty is payable under Section 6.3 or Section 6.4 above, as applicable. Concurrently with the making of such reports, such Party shall pay to the other Party royalties due at the rates specified in Section 6.3 or Section 6.4 above, as applicable.

7.2 Payment Method. All payments due under this Agreement shall be made by bank wire transfer in immediately available funds to a bank account designated by the Party owed such payment. All payments hereunder shall be made in U.S. dollars. Any payments that are not paid on the date such payments are due under this Agreement shall bear interest to the extent permitted by applicable law at a rate equal to the 3-month LIBOR rate at the close of business on the date such payment is due, plus an additional [*], calculated on the number of days such payment is delinquent.

7.3 Place of Royalty Payment; Currency Conversion. The functional currency for accounting will be U.S. dollars. Except as the Parties otherwise mutually agree, for billing and reporting, Net Sales will be translated, if necessary, into U.S. dollars using the currency exchange rates quoted by *Bloomberg Professional*, a service of Bloomberg L.P., or in the event *Bloomberg Professional* is not available, then the Eastern U.S. edition of *The Wall Street Journal* on the last business day of the applicable calendar quarter.

7.4 Records; Inspection. Each Party shall keep, and shall ensure that its Affiliates keep, complete, true and accurate books of account and records for the purpose of determining the amounts payable under this Agreement. Such books and records shall be kept at the principal place of business of such Party, for at least [*] following the end of the calendar quarter to which they pertain. Such records will be open for inspection by a public accounting firm to whom the audited Party has no reasonable objection and subject to such accounting firm entering into a satisfactory confidentiality agreement, solely for the purpose of determining the payments to the other Party hereunder. Such inspections may be made no more than twice each calendar year, at reasonable times and on reasonable notice. Inspections conducted under this Section 7.4 shall be at the expense of the auditing Party, unless a variation or error producing an increase exceeding [*] of the amount stated for the period covered by the inspection is established in the course of any such inspection, whereupon all reasonable costs relating to the inspection for such period and any unpaid or overpaid amounts that are discovered will be promptly paid or refunded by the appropriate Party, in each case together with interest noted in Section 7.2 thereon from the date such payments were due (if underpaid) or paid (if overpaid).

7.5 Withholding Taxes. Each Party shall pay any and all taxes levied on account of amounts payable to it under this Agreement. If laws or regulations require that taxes be withheld, the paying Party will (i) deduct those taxes from the remittable payment, (ii) timely pay the taxes to the proper authority, and (iii) send proof of payment to the other Party within [*] following that payment.

**ARTICLE 8**
**DILIGENCE**

8.1 Diligence; Reports. DOT-1 agrees to keep Sunesis fully informed regarding the Development and commercialization activities with respect to each Licensed Product by providing reports to Sunesis at least quarterly regarding ongoing activities being undertaken with respect to Licensed Products. In addition, DOT-1 shall provide Diligence Summaries to Sunesis with respect to each Licensed Product on a semi-annual basis during the Term of this Agreement. This Section 8.1 shall not limit other provisions of this Agreement that address the provision of information regarding Licensed Products.

8.2 Reversion of a Licensed Product.

8.2.1 After Millennium Reversion. If, in each case after a Millennium Reversion, a Diligence Failure occurs, or Sunesis terminates this Agreement pursuant to Section 13.2 for DOT-1's breach or pursuant to Section 13.3 for DOT-1's bankruptcy, or DOT-1 terminates this Agreement pursuant to Section 13.4 for convenience with respect to a Licensed Product, Sunesis shall have the right to assume the development and commercialization of such Licensed Product, subject to the terms and conditions of this Agreement, including Section 5.1.2 and this Section 8.2, upon written notice to DOT-1. Upon the effective date of such notice from Sunesis, subject to Section 5.1.2, such Licensed Product shall be designated a "Reverted Licensed Product", the terms set forth in Section 1 of Exhibit 8.2 attached hereto shall thereafter apply, and Sunesis shall pay royalties to DOT- 1 as provided under Section 6.4 on Net Sales of such Reverted Licensed Product by Sunesis, its Affiliates or Sublicensees. For purposes of this Section 8.2, a "Diligence Failure" means if DOT-1 or, after a Millennium Reversion with respect to a Licensed Product that includes an assignment of this Agreement to Millennium, Millennium fails to use Commercially Reasonable and Diligent Efforts to Develop, obtain Regulatory Approvals and necessary pricing or reimbursement approvals (if any) for and commercialize a Licensed Product in the Field, and DOT-1 or Millennium, as applicable, shall continue to fail to use such Commercially Reasonable and Diligent Efforts to develop and commercialize such Licensed Product for [*] after written notice thereof from Sunesis.

8.2.2 Prior to a Millennium Reversion. If, prior to a Millennium Reversion, (a) a Diligence Failure occurs, (b) Sunesis notifies DOT-1 in writing that Sunesis intends to terminate this Agreement pursuant to Section 13.2 for DOT-1's breach or pursuant to Section 13.3 for DOT-1's bankruptcy or (c) DOT-1 notifies Sunesis in writing that DOT- 1 intends terminate this Agreement pursuant to Section 13.4 for convenience with respect to a Licensed Product, then Sunesis shall promptly notify Millennium in writing (with a copy to DOT-1) and offer Millennium the option to receive an assignment from DOT-1 of all of DOT-1's rights and obligations under this Agreement (as part of a Millennium Reversion) or to waive its right to a Millennium Reversion (such notice, the "Option Notice" and such option, the "Millennium Option"). If Millennium exercises the Millennium Option, in its discretion, by written notice to Sunesis (with a copy to DOT-1) within [*] after the date of the Option Notice (such period, the "Millennium Option Period") to receive an assignment of this Agreement, then, upon timely receipt of

Millennium's exercise notice, (i) DOT-1 shall assign this Agreement, including all of DOT-1's rights and obligations thereunder, to Millennium, (ii) Millennium shall assume all such obligations in writing to Sunesis, (iii) all references to DOT-1 in this Agreement shall, with respect to events and activities after such assignment, be deemed to be references to Millennium, (iv) this Agreement will remain in full force and effect, and (v) Sunesis will not have the right to assume the development and commercialization of such Licensed Product and such Licensed Product shall not become a Reverted Licensed Product, in the case of (iv) and (v) unless and until (a), (b) or (c) above happens another time after a Millennium Reversion, in which case Section 8.2(a) shall apply. If Millennium exercises the Millennium Option to waive its rights to the Millennium Reversion before the end of the Millennium Option Period, then the termination pursuant to Section 13.2, 13.3 or 13.4 (as applicable) shall become effective upon the later of (x) the date such termination is specified in such Section to take effect or (y) the end of the Millennium Option Period, and such Licensed Product shall be designated a "Reverted Licensed Product", the terms set forth in Section 1 of Exhibit 8.2 attached hereto shall thereafter apply, and Sunesis shall pay royalties to DOT-1 as provided under Section 6.4 on Net Sales of such Reverted Licensed Product by Sunesis, its Affiliates or Sublicensees. If Millennium does not exercise the Millennium Option during the Millennium Option Period, then Sunesis may terminate this Agreement pursuant to Section 13.2 for DOT-1's breach or pursuant to Section 13.3 for DOT-1's bankruptcy, but no Licensed Product shall become a Reverted Licensed Product and the licenses set forth in Section 5.1.3 shall not apply.

8.3 Diligence for a Reverted Licensed Product. Sunesis shall use Commercially Reasonable and Diligent Efforts to develop and commercialize each Reverted Licensed Product. Sunesis agrees to keep DOT-1 fully informed regarding the development and commercialization activities with respect to each Reverted Licensed Product, including by providing DOT-1 with reports at least quarterly regarding ongoing activities being undertaken with respect to Reverted Licensed Products. In addition, Sunesis shall provide DOT-1 with a Diligence Summary with respect to each Reverted Licensed Product on a semi-annual basis during the Term of this Agreement.

8.4 Termination of a Reverted Licensed Product. If Sunesis fails to use Commercially Reasonable and Diligent Efforts to develop and commercialize a Reverted Licensed Product, and Sunesis shall continue to fail to use Commercially Reasonable and Diligent Efforts to develop and commercialize such Reverted Licensed Product for [*] after written notice thereof from DOT-1, then such Reverted Licensed Product shall cease to be a Reverted Licensed Product, and the license granted to Sunesis under Section 5.1.3 shall terminate with respect to such Reverted Licensed Product. Thereafter, such Reverted Licensed Product shall be a Licensed Product and subject to DOT-1's licenses under Section 5.1 and obligations to pay royalties and milestones to Sunesis pursuant to Article 6. In addition, the terms set forth in Section 2 of Exhibit 8.2 shall apply to such Reverted Licensed Product.

8.5 Disputes. In the event that there is a good faith dispute as to whether the activities described in a Diligence Summary constitute Commercially Reasonable and Diligent Efforts to develop and commercialize the applicable Licensed Product or Reverted Licensed Product, then either Party may refer the dispute to a senior executive from each Party. Such senior executive

shall be either the CEO or President of such Party, or other senior executive of such Party with the title of Vice President or higher and who has direct management responsibility for the matter in dispute. Upon such request, such senior executives shall make themselves reasonably available to meet, and shall meet either by telephone or if, specifically requested, in person, to attempt to resolve such matter, and shall thereafter continue to use good faith efforts to attempt to resolve such matter unless it becomes clear that the matter cannot be resolved by mutual agreement. Thereafter either Party may pursue such legal process as is otherwise available under applicable law.

## ARTICLE 9
## INTELLECTUAL PROPERTY

9.1 Ownership; Disclosure.

9.1.1 Collaboration Technology.

(a) Raf Technology. All right, title, and interest in and to the Joint Collaboration Patents, the subject of which are inventions that were developed in the course of activities that were directed to the Raf Target or to the discovery, research, or development of Licensed Compounds which are Target Selective to the Raf Target or Licensed Products incorporating such Licensed Compounds, are jointly owned by DOT-1 and Sunesis, as is all other Joint Collaboration Technology. Except as expressly provided in this Agreement, neither Party shall have any obligation to account to the other for profits, or to obtain any approval of the other Party to assign, license, exploit or enforce the Joint Collaboration Technology, by reason of joint ownership thereof, and each Party hereby waives any right it may have under the laws of any jurisdiction to require any accounting or consent related thereto. It is understood and agreed that Sunesis and its Affiliates' interest in all Joint Collaboration Technology shall be subject to the licenses granted under Article 5.

(b) Sunesis Collaboration Technology. Subject to Section 9.1.1(a), all right, title, and interest in and to the Sunesis Collaboration Technology shall be owned by Sunesis, subject to the licenses granted to DOT-1 under Article 5.

(c) Reserved.

(d) Reserved.

9.1.2 Development Technology. All right, title and interest in and to the Development Technology and the DOT-1 Collaboration Technology shall, as between the Parties, be owned solely by DOT-1.

9.2 Patent Prosecution.

9.2.1 Reserved.

9.2.2 Collaboration Patents and Development Patents. DOT-1 shall have the first right, using in-house or outside legal counsel selected by DOT-1, subject to approval, not to be unreasonably withheld, by Sunesis, to prepare, file, prosecute, maintain, and obtain extensions

throughout the world of the Sunesis Licensed Patents, the Collaboration Patents, and Patent Rights in the Development Technology that claim or cover the Raf Target, Licensed Compounds or Licensed Products, or the use of manufacture thereof. DOT-1 shall: (a) ensure that Sunesis receives copies of all correspondence between DOT-1 or outside legal counsel or any governmental offices relating to such preparation, filing, prosecution, maintenance, and obtaining of extensions, of such Sunesis Licensed Patents, Sunesis Collaboration Patents, Joint Collaboration Patents and other Patent Rights subject to this Section 9.2.2 ("Other Patent Rights"), (b) timely consult with Sunesis regarding all substantive matters associated with such activities in (a), (c) use reasonable efforts to periodically advise Sunesis on such activities and to respond to any reasonable inquiries Sunesis may from time to time raise in respect of such activities in (a) or (b), and (d) not substantially negatively impact Sunesis's rights under such Sunesis Licensed Patents or Collaboration Patents. As used in this Article 9, "prosecution" shall include interferences, re-examinations, reissues, oppositions and the like.

9.2.3 Prosecution Costs. All costs incurred by DOT-1 after the Effective Date associated with filing, prosecuting, issuing, maintaining, and extending the Patent Rights described in Section 9.2.2 shall, as between the Parties, be borne by DOT-1.

9.2.4 Cooperation. Each Party will cooperate fully with the other Party and provide all information and data, and sign any documents, reasonably necessary and requested by the other Party for the purpose of preparing, filing and prosecuting patent applications pursuant to this Section 9.2.

9.2.5 Abandonment.

(a) DOT-1 may elect to decline to file or, having filed, decline to further prosecute and maintain any Sunesis Licensed Patent, Sunesis Collaboration Patent, Joint Collaboration Patent or Other Patent Rights, in which event DOT-1 shall provide Sunesis with written notice thereof prior to the expiration of any deadline, without considering any possible extensions thereof, relating to such activities, but in any event at least [*] prior notice. In such circumstances Sunesis shall have the right to decide, with reason and with written notice at least [*] prior to the deadline, that DOT-1 should continue to file or prosecute such Patent Right. DOT-1 shall then have the option to decide, with at least [*] notice to Sunesis to: (i) continue to file or prosecute such Patent Right at its cost and expense, or (ii) allow Sunesis to file or prosecute such Patent Right at its own cost and expense using counsel of its own choice. In the event that DOT-1 elects option (ii), then DOT-1 shall cooperate with Sunesis to promptly transfer relevant prosecution materials to Sunesis.

(b) It is understood and agreed that transfer of prosecution of particular Patent Rights pursuant to subsection (ii) in Section 9.2.5(a) above shall not affect the ownership or licenses otherwise provided in this Agreement.

9.3 Enforcement.

9.3.1 Notice. In the event a Party becomes aware of any actual or potential infringement or misappropriation of (a) the Sunesis Licensed Technology, Joint Collaboration

Technology, DOT-1 Collaboration Technology or Sunesis Collaboration Technology in each case that relates to the Raf Target or Licensed Compounds or Licensed Products or (b) the Joint Collaboration Technology ((a) and (b), each, a "Subject Infringement"), such Party shall notify the other Party.

9.3.2 DOT-1. DOT-1 shall have the sole right, but not the obligation, to take legal action to:

(a) enforce and defend the Sunesis Licensed Technology or the Sunesis Collaboration Technology against Subject Infringements by Third Parties at its sole cost and expense. If, within [*] following a request by Sunesis to do so, DOT-1 fails to use commercially reasonable efforts to take such action to enforce and defend any actual or potential infringement or misappropriation of the Sunesis Licensed Technology or Sunesis Collaboration Technology with respect to a Subject Infringement, Sunesis or its designee shall, in its sole discretion, have the right, at its sole expense, to take such action.

(b) enforce and defend the DOT-1 Collaboration Technology or Joint Collaboration Technology against Subject Infringements by Third Parties at its sole cost and expense. If, within [*] following a request by Sunesis to do so, DOT-1 (either directly or indirectly through Millennium or a Sublicensee) fails to use commercially reasonable efforts to take such action to enforce and defend any actual or potential infringement or misappropriation of the DOT-1 Collaboration Technology or Joint Collaboration Technology against a Subject Infringement, Sunesis or its designee shall, in its sole discretion, have the right, at its sole expense, to take such action; provided that Millennium has not commenced action to enforce or defend any infringement or misappropriation of the DOT-1 Collaboration Technology or Joint Collaboration Technology.

9.3.3 Sunesis. To the extent an infringement or misappropriation of the Sunesis Licensed Technology or Sunesis Collaboration Technology is not a Subject Infringement covered by Section 9.3.2 above, Sunesis (or its designee) shall have the initial right, but not the obligation, to take reasonable legal action to enforce and defend the Sunesis Licensed Technology or Sunesis Collaboration Technology against such infringement or misappropriation by Third Parties at its sole cost and expense. If, within [*] following a request by DOT-1 to do so, Sunesis (or its designee) fails to take such action to enforce and defend any actual or potential infringement or misappropriation of the Sunesis Licensed Technology or Sunesis Collaboration Technology with respect to such Subject Infringement, DOT-1 or its designee shall, in its sole discretion, have the right, at its sole expense, to take such action.

9.3.4 Cooperation. If a Party (the "Controlling Party") brings an action in accordance with this Section 9.3 (an "Infringement Action"), then the other Party (the "Cooperating Party") shall cooperate as reasonably requested, at such Controlling Party's expense, in the pursuit of such Infringement Action, including if necessary by joining as a nominal Party to the Infringement Action. In any case, the Cooperating Party shall have the right, even if not required to be joined, to participate in such Infringement Action with its own counsel at its own expense. The costs and expenses of the Infringement Action shall be the responsibility of the Controlling Party, and any damages or other monetary rewards or settlement payments actually received and retained by the Controlling Party shall first be applied to reimburse the Controlling

Party's out-of- pocket expenses directly attributed to the Infringement Action, then the other Party's out-of-pocket expenses directly attributed to the Infringement Action, then the other Party's out-of-pocket expenses directly attributed to the Infringement Action**,** and the remainder shall be shared as follows: [*].

## ARTICLE 10
## CONFIDENTIALITY

10.1 Confidentiality. During the Term of this Agreement and for a period of [*] following the expiration or earlier termination hereof, each Party shall maintain in confidence the Confidential Information of the other Party, shall not use or grant the use of the Confidential Information of the other Party except as expressly permitted hereby, and shall not disclose the Confidential Information of the other Party (in each case, irrespective of whether such Confidential Information is also the Confidential Information of the receiving Party), except (i) on a need-to-know basis to such Party's directors, officers and employees, (ii) to such Party's consultants performing work contemplated by the Agreement, and to any bona fide subcontractor performing work for such Party hereunder, or (iii) to the extent such disclosure is reasonably necessary in connection with such Party's activities under rights and licenses expressly authorized by this Agreement (including the permitted sublicensees). To the extent that disclosure to any person is authorized by this Agreement, prior to disclosure, a Party shall obtain written agreement of such person to hold in confidence and not disclose, use or grant the use of the Confidential Information of the other Party except as expressly permitted under this Agreement. Each Party shall notify the other Party promptly upon discovery of any unauthorized use or disclosure of the other Party's Confidential Information.

10.2 Permitted Use and Disclosures. The confidentiality obligations under this Article 10 shall not apply to the extent that a Party is required to disclose information by applicable law, regulation or order of a governmental agency or a court of competent jurisdiction; provided, however, that such Party shall provide written notice thereof to the other Party (to the extent not prohibited by law or court order), and consult with the other Party with respect to such disclosure to the extent reasonably protectable and provide the other party reasonable opportunity to object to any such disclosure or to request confidential treatment thereof. Notwithstanding the provisions of this Section, either Party may, to the extent necessary, disclose Confidential Information of the other Party, to any governmental or regulatory authority in connection with the development of a product which it has the right to develop under this Agreement.

10.3 Nondisclosure of Terms. Each of the Parties hereto agrees not to disclose the financial terms of this Agreement to any Third Party without the prior written consent of the other Party hereto, which consent shall not be unreasonably withheld, except (a) to such Party's attorneys, advisors, investors, potential *bona fide* collaborators and Sublicensees, and others on a need-to-know basis under circumstances that reasonably protect the confidentiality thereof; (b) or to the extent required by law (and with appropriate requests made for confidential treatment), including filings required to made by law with the Securities and Exchange Commission or any national securities exchange; provided, however, that, with respect to any filing required to made by law with the Securities and Exchange Commission or any national securities exchange, the Party subject to such filing requirement shall, at least [*] in advance of any such filing, provide the other Party with a draft set of redactions to this Agreement for which confidential treatment

will be sought, reasonably incorporate the other Party's comments as to additional terms it would like to see redacted, and seek confidential treatment for such additional terms (except only in the limited circumstances where confidential treatment is in the opinion of outside counsel unavailable); or (c) to Millennium, to the extent required in connection with a Millennium Reversion and under circumstances that reasonably protect the confidentiality thereof. Notwithstanding the foregoing, (i) Sunesis may issue any press release to be mutually agreed by the Parties, and (ii) each Party may disclose the information contained in such press release (and related Securities and Exchange Commission filing) without the consent of the other Party.

10.4 Publication.

10.4.1 For clarity, nothing in this Section 10.4 shall be deemed to limit the publication or disclosure right of Sunesis with respect to a Reverted Licensed Product; provided that Sunesis shall provide DOT-1 with a courtesy copy of such manuscript prior to its publication.

10.4.2 By DOT-1. As between the Parties, DOT-1 shall have the sole right, but not the obligation, to publish or publicly disclose, in its sole discretion, any manuscript containing scientific or clinical results with respect to Licensed Products generated during the Term or included in the Collaboration Technology, in each case as relating to the Raf Target, Licensed Compounds or Licensed Products, and shall provide Sunesis with a courtesy copy of such manuscript prior to its publication.

10.4.3 Reserved.

## ARTICLE 11
## REPRESENTATIONS AND WARRANTIES

11.1 Warranty. Each Party represents and warrants on its own behalf and on behalf of its Affiliates that as of the Effective Date:

(i) Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized.

(ii) It has the legal power and authority to enter into this Agreement and to perform all of its obligations hereunder.

(iii) This Agreement is a legal and valid obligation binding upon it and enforceable in accordance with its terms.

(iv) All necessary consents, approvals and authorizations of all governmental authorities and other persons or entities required to be obtained by such Party in connection with this Agreement have been obtained.

(v) The execution and delivery of this Agreement and the performance of such Party's obligations hereunder (a) do not conflict with or violate any requirement of applicable laws, regulations or orders of governmental bodies; and (b) do not conflict with, or constitute a default under, any contractual obligation of such Party. Neither Party will enter into any agreement with any Third Party that conflicts with the terms of this Agreement.

(vi) Such Party requires, and shall require, that all of its employees and consultants involved in the Development, manufacture or commercialization of Licensed Compounds, Licensed Products, Reverted Compounds or Reverted Licensed Products have entered into written agreements obligating such person to assign any rights s/he may have in any inventions made during such work to such Party.

11.2 Additional Warranties of Sunesis. Sunesis represents and warrants to DOT-1 as of the Effective Date that:

11.2.1 Sunesis has not received any notice of infringement or misappropriation from any Third Party relating to the Sunesis Licensed Technology;

11.2.2 Sunesis has not received any notice challenging the scope of validity of the Sunesis Licensed Technology;

11.2.3 To Sunesis' knowledge, the Sunesis Licensed Technology is legally possessed by Sunesis and has not been misappropriated from any Third Party;

11.2.4 To Sunesis' knowledge, the Patent Rights listed on Exhibits 1.18, 1.37, and 1.38 comprise all Patent Rights Controlled by Sunesis or its Affiliates as of the Effective Date that claim or cover the Raf Target, the Licensed Compounds and Licensed Products;

11.2.5 Sunesis has the right to grant the licenses set forth herein under the Patent Rights set forth on Exhibits 1.37, 1.38, and 1.18;

11.2.6 Sunesis has not granted any rights that conflict with those granted to DOT-1 pursuant to this Agreement;

11.2.7 To the extent that there are still any pending Patent Rights (i.e. all Patent Rights except those that have expired or been abandoned) included in the definition of Sunesis Core Technology (as such term is defined in the Raf Agreement), to Sunesis' knowledge, Sunesis is not aware of any such Patent Rights that cover the composition of matter of the Licensed Compounds, or their manufacture or use for any indication.

11.3 Additional Warranties of DOT-1. DOT-1 represents and warrants to Sunesis as of the Effective Date that:

11.3.1 the Patent Rights and Know-How on Exhibits 1.14 and 1.18 comprise all of the Patent Rights and Know-How to which DOT-1 received rights from Millennium pursuant to the ATLA and related documents entered into between DOT-1 and Millennium in connection therewith (collectively, the "Transaction Documents");

11.3.2 DOT-1 has the right to grant has the right to grant the licenses set forth herein under such Patent Rights and Know-How; and

11.3.3 the document entitled " 20191212 Takeda Agreement – Reversion Terms Document.docx" that was provided by DOT-1's counsel to Sunesis' counsel on December 12, 2019 is a complete and accurate copy of the identified provisions and definitions of the ATLA and it completely and accurately describes all of the effects of termination of the ALTA with respect to the Millennium Reversion.

11.4 Disclaimer. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE COLLABORATION TECHNOLOGY, DEVELOPMENT TECHNOLOGY, OTHER DOT-1 TECHNOLOGY, LICENSED COMPOUNDS, OTHER COMPOUNDS, LICENSED PRODUCTS, RAF TARGET OR CONFIDENTIAL INFORMATION, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, VALIDITY OF ANY COLLABORATION TECHNOLOGY, PATENTED OR UNPATENTED, OR NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES.

## ARTICLE 12
## INDEMNIFICATION

12.1 DOT-1. DOT-1 shall indemnify, defend and hold harmless Sunesis and its Affiliates and their respective directors, officers, employees, agents and their respective successors, heirs and assigns from and against any losses, costs, claims, damages, liabilities or expense (including reasonable attorneys' and professional fees and other expenses of litigation) (collectively, "Liabilities") resulting from any claims, demands, actions or other proceedings by any Third Party to the extent resulting from: (i) the manufacture, use, sale, handling or storage of Licensed Products by (a) Millennium or its Affiliates or Sublicensees (as defined in the Prior License Agreement) or other designees or (b) DOT-1 or its Affiliates or Sublicensees or other designees (except in each case with respect to claims of infringement or violation of intellectual property rights, which shall be governed solely by clause (iv)); (ii) the breach by DOT-1 of the representations and warranties made in this Agreement; (iii) the negligence or intentional misconduct of DOT-1 or any of its agents or employees or failure of DOT-1 or any of its agents or employees to comply with applicable laws and regulations; or (iv) a claim that the use, manufacture, sale or importation of a Licensed Product infringes or violates the intellectual property rights of a Third Party (other than if such infringement or violation results solely from the practice of any Sunesis Licensed Technology (excluding any Joint Collaboration Patents and Joint Collaboration Know-How) in accordance with this Agreement); except, in each of cases (i)– (iv), to the extent such Liabilities result from a material breach of this Agreement by Sunesis, negligence or intentional misconduct of Sunesis or any of its agents or employees or failure of Sunesis or any of its employees or agents to comply with applicable laws or regulations.

12.2 Sunesis. Sunesis agrees to indemnify, defend and hold harmless DOT-1 and its Affiliates and their respective directors, officers, employees, agents and their respective heirs and assigns from and against any Liabilities resulting from any claims, demands, actions or other proceedings by any Third Party to the extent resulting from: (i) the manufacture, use, sale, handling or storage of Reverted Licensed Products by Sunesis or its Affiliates or Sublicensees or other designees, (ii) the breach by Sunesis of its representations and warranties made in this Agreement or (ii) the negligence or intentional misconduct of Sunesis or any of its agents or employees or failure of Sunesis or any of its agents or employees to comply with applicable laws and regulations; except, in each case, to the extent such Liabilities result from a breach of this Agreement by DOT-1, negligence or intentional misconduct of DOT-1 or any of its agents or employees or failure of DOT-1 or any of its employees or agents to comply with applicable laws or regulations.

12.3 Procedure. If a Party (the "Indemnitee") intends to claim indemnification under this Article 12, it shall promptly notify the other Party (the "Indemnitor") in writing of any claim, demand, action or other proceeding for which the Indemnitee intends to claim such indemnification, and the Indemnitor shall have the right to participate in, and, to the extent the Indemnitor so desires, to assume the defense thereof with counsel mutually satisfactory to the Parties; provided, however, that an Indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the Indemnitor, if representation of such Indemnitee by the counsel retained by the Indemnitor would be inappropriate due to actual or potential differing interests between the Indemnitee and any other Party represented by such counsel in such proceeding. The obligations of this Article 12 shall not apply to amounts paid in settlement of any claim, demand, action or other proceeding if such settlement is effected without the consent of the Indemnitor, which consent shall not be withheld or delayed unreasonably. The failure to deliver written notice to the Indemnitor within a reasonable time after the commencement of any such action, if prejudicial to its ability to defend such action, shall relieve the Indemnitor of any obligation to the Indemnitee under this Article 12. The Indemnitee, its employees and agents, shall reasonably cooperate with the Indemnitor and its legal representatives in the investigation of any claim, demand, action or other proceeding covered by this Article 12. The Indemnitor shall not, without the Indemnitee's consent, which consent shall not be withheld or delayed unreasonably, consent to the entry of any judgment or accept any settlement with respect to such claim, demand, action or proceeding which imposes liability not covered by this indemnification or restrictions on the Indemnitee.

## ARTICLE 13
## TERM AND TERMINATION

13.1 Term.

13.1.1 The Raf Agreement shall be amended and restated and superseded by this Agreement on the Effective Date.

13.1.2 The term of this Agreement shall commence on the Effective Date, and shall continue in full force and effect on a country-by-country and Product-by-Product basis until expiration of both Parties' royalty payment obligations in such country with respect to such Products, in each case unless earlier terminated as provided in this Article 13 (the "Term"). Upon expiration of the Term, the licenses granted to DOT-1 and Sunesis in this Agreement shall become fully paid-up, royalty-free, perpetual and irrevocable.

13.2 Termination for Breach. Either Party to this Agreement may terminate this Agreement, with respect to the applicable compounds and products only, in the event the other Party hereto shall have materially breached or defaulted in the performance of any of its material obligations hereunder with respect to any Licensed Product(s), Licensed Compound(s) or Reverted Licensed Product(s), and such default shall have continued for [*] after written notice thereof was provided to the breaching Party by the non-breaching Party. Such termination shall be specifically limited to the compounds and products to which the breach or default relates, and this Agreement

shall continue in full force and effect with respect to any other Licensed Product, Licensed Compound or Reverted Licensed Product. Any termination shall become effective at the end of such [*] period unless the breaching Party has cured any such breach or default prior to the expiration of the [*] period. Notwithstanding the foregoing, failure by either Party to use Commercially Reasonable and Diligent Efforts with respect to the development and commercialization of a Product shall not be deemed a breach of this Agreement.

13.3 Termination For Bankruptcy. Either Party hereto shall have the right to terminate this Agreement forthwith by written notice to the other Party (i) if the other Party is declared insolvent or bankrupt by a court of competent jurisdiction, (ii) if a voluntary or involuntary petition in bankruptcy is filed in any court of competent jurisdiction against the other Party and such petition is not dismissed within [*] after filing, (iii) if the other Party shall make or execute an assignment of substantially all of its assets for the benefit of creditors, or (iv) substantially all of the assets of such other Party are seized or attached and not released within [*] thereafter. All rights and licenses granted under this Agreement by one Party to the other Party are, and shall otherwise be deemed for purposes of Section 365(n) of the Bankruptcy Code, licenses of rights to "intellectual property" as defined under Section 101 (56) of the Bankruptcy Code. The Parties agree that the licensing Party under this Agreement shall retain and may fully exercise all of its rights and elections under the Bankruptcy Code in the event of a bankruptcy by the other Party. The Parties further agree that in the event of the commencement of a bankruptcy proceeding by or against one Party under the Bankruptcy Code, the other Party shall be entitled to complete access to any such intellectual property pertaining to the rights granted in the licenses hereunder of the Party by or against whom a bankruptcy proceeding has been commenced and all embodiments of such intellectual property.

13.4 Termination for Convenience. Provided that DOT-1 is not in breach of this Agreement, DOT-1 will have the right to terminate this Agreement at any time with respect to any or all of the Licensed Compounds and Licensed Products, by providing [*] prior written notice. In such event, this Agreement will remain in effect with respect to Reverted Licensed Products and any other Licensed Compound or Licensed Product, in each case that has not been terminated. Provided that Sunesis is not in breach of this Agreement, Sunesis will have the right to terminate this Agreement at any time with respect to any or all of the Reverted Licensed Products, by providing [*] prior written notice. In such event, this Agreement will remain in effect with respect to Licensed Compounds and Licensed Products and any other Reverted Licensed Products, in each case that has not been terminated.

13.5 Effect of Breach or Termination.

13.5.1 Accrued Rights and Obligations. Termination of this Agreement for any reason shall not release either Party hereto from any liability which, at the time of such termination, has already accrued to the other Party or which is attributable to a period prior to such termination nor preclude either Party from pursuing any rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement.

13.5.2 Termination by DOT-1 for Bankruptcy of Sunesis. In the event of termination of this Agreement by DOT-1 pursuant to Section 13.3 for Sunesis's bankruptcy, in addition to those provisions surviving under Section 13.8, the following shall apply:

(a) Sections 5.1.3 (License for Reverted Licensed Products) (but only with respect to Reverted Licensed Products in existence as of the effective date of such termination); (Development Milestones); 6.3 (Royalties on Annual Net Sales of Licensed Products) (except that any royalties payable by DOT-1 thereunder, commencing upon such termination and continuing thereafter, shall be reduced by [*]); 6.4 (Royalties on Net Sales of Reverted Licensed Products); 6.5 (Royalty Term); Article 9 (Intellectual Property) (other than Sections 9.2.2 and 9.2.3, which shall terminate except to the extent expressly set forth in Section 13.5.2(b) below); and Exhibit 8.2 (Reverted Licensed Products) (but only with respect to Reverted Licensed Products in existence as of the effective date of such termination) shall survive.

(b) The prosecution rights that DOT-1 has pursuant to Section 9.2.2 shall survive. Sunesis shall be given the opportunity to review DOT-1's activities and reasonably consult with DOT-1 with respect to such Sunesis Collaboration Patents and Joint Collaboration Patents, and DOT-1 shall in good faith consider including in such patent applications such claims as Sunesis reasonably requests. DOT-1 shall keep Sunesis reasonably informed as to the status of such patent matters, including by providing Sunesis with (i) copies of any documents relating to such Sunesis Licensed Patents, Sunesis Collaboration Patents and Joint Collaboration Patents which DOT-1 receives from any patent office within [*] of receipt thereof, including notice of all interferences, reissues, reexaminations, oppositions or requests for patent term extensions, and (ii) the opportunity to review and comment on any documents relating to such Sunesis Licensed Patents, Sunesis Collaboration Patents and Joint Collaboration Patents which will be filed in any patent office as soon practicable but in all cases at least [*] prior to such filing. In conducting the prosecution activities described in this Section 13.5.2(b), each Party shall employ reasonable efforts not to substantially negatively impact the other Party's rights under the surviving provisions of this Agreement.

13.5.3 Termination by Sunesis for Breach or Bankruptcy of DOT-1. In the event of any termination by Sunesis pursuant to Section 13.2 due to DOT-1's breach (only with respect to the Licensed Compounds, Licensed Products and Raf Target) or pursuant to Section 13.3 for DOT-1's bankruptcy, in addition to those provisions surviving under Section 13.8, the following provisions of this Section 13.5.3 shall apply:

(a) 5.1.3 (License for Reverted Licensed Products); 6.2 (Development Milestones); 6.3 (Royalties on Annual Net Sales of Licensed Products); 6.4 (Royalties on Net Sales of Reverted Licensed Products (except that any royalties payable by Sunesis thereunder, commencing upon such termination and continuing thereafter, shall be reduced by [*]); 6.5 (Royalty Term); Article 8 (Diligence); Article 9 (Intellectual Property) (other than Sections 9.2.2 and 9.2.3, which shall terminate); and Exhibit 8.2 (Reverted Licensed Products) shall survive, in addition to those provisions surviving under Section 13.8.

(b) DOT-1 shall control prosecution of all the DOT-1 Collaboration Patents at its own expense, only for such Patent Rights that are related to the Raf Target, Licensed Compounds and Licensed Products. Sunesis shall control prosecution of all Sunesis Collaboration Patents and Joint Collaboration Patents at its own expense for such Sunesis Collaboration Patents and Joint Collaboration Patents that are related to the Raf Target, Licensed Compounds and Licensed Products, as the case may be. DOT-1 shall be given the opportunity to review Sunesis's activities and reasonably consult with Sunesis with respect to such Joint Collaboration Patents,

and Sunesis shall in good faith consider including in such patent applications such claims as DOT- 1 reasonably requests. Sunesis shall keep DOT-1 reasonably informed as to the status of such patent matters, including by providing DOT-1 with (i) copies of any documents relating to such Joint Collaboration Patents which Sunesis receives from any patent office within [*] of receipt thereof, including notice of all interferences, reissues, reexaminations, oppositions or requests for patent term extensions, and (ii) the opportunity to review and comment on any documents relating to such Joint Collaboration Patents which will be filed in any patent office as soon practicable but in all cases at least [*] prior to such filing. In conducting the prosecution activities described in this Section 13.5.3(b), each Party shall employ reasonable efforts not to substantially negatively impact the other Party's rights under the surviving provisions of this Agreement.

(c) Subject to Section 5.1.2, each Licensed Product shall become a Reverted Licensed Product in accordance with Section 8.2 and Exhibit 8.2 and Sunesis shall thereafter pay royalties to DOT-1 on Net Sales of such Reverted Licensed Product in accordance with Section 6.4 (except that any royalties payable by Sunesis thereunder, commencing upon such termination and continuing thereafter, shall be reduced by [*].

13.6 Termination by DOT-1 for Convenience. In the event of termination of this Agreement by DOT-1 pursuant to Section 13.4, in addition to those provisions surviving under Section 13.8, the following shall apply:

13.6.1 Sections 5.1.3 (License for Reverted Licensed Products); 6.2 (Development Milestones); 6.3 (Royalties on Annual Net Sales of Licensed Products); 6.4 (Royalties on Net Sales of Reverted Licensed Products) (except that any royalties payable by Sunesis thereunder, commencing upon such termination and continuing thereafter, shall be reduced by [*]); Section 6.5 (Royalty Term); Article 8 (Diligence); Article 9 (Intellectual Property) (other than Sections 9.2.2 and 9.2.3, which shall terminate); and Exhibit 8.2 (Reverted Licensed Products) shall survive, in addition to those provisions surviving under Section 13.8.

13.6.2 DOT-1 shall control prosecution of all the DOT-1 Collaboration Patents at its own expense, only for such Patent Rights that are related to the Raf Target, Licensed Compounds and Licensed Products. Sunesis shall control prosecution of all Sunesis Collaboration Patents and Joint Collaboration Patents at its own expense for such Sunesis Collaboration Patents and Joint Collaboration Patents that are related to the Raf Target, Licensed Compounds and Licensed Products, as the case may be. DOT-1 shall be given the opportunity to review Sunesis's activities and reasonably consult with Sunesis with respect to such Joint Collaboration Patents, and Sunesis shall in good faith consider including in such patent applications such claims as DOT-1 reasonably requests. Sunesis shall keep DOT-1 reasonably informed as to the status of such patent matters, including by providing DOT-1 with (i) copies of any documents relating to such Joint Collaboration Patents which Sunesis receives from any patent office within [*] of receipt thereof, including notice of all interferences, reissues, reexaminations, oppositions or requests for patent term extensions, and (ii) the opportunity to review and comment on any documents relating to such Joint Collaboration Patents which will be filed in any patent office as soon practicable but in all cases at least [*] prior to such filing. In conducting the prosecution activities described in this Section 13.6.2, each Party shall employ reasonable efforts not to substantially negatively impact the other Party's rights under the surviving provisions of this Agreement.

13.6.3 Subject to Section 5.1.2, each Licensed Product shall become a Reverted Licensed Product in accordance with Section 8.2 and Exhibit 8.2 and Sunesis shall thereafter pay royalties to DOT-1 on Net Sales of such Reverted Licensed Product in accordance with Section 6.4 (except that any royalties payable by Sunesis thereunder, commencing upon such termination and continuing thereafter, shall be reduced by [*]).

13.7 Transition of Information and Materials. With respect to a Party's obligation to transition Collaboration Technology, information and material with respect to a particular Licensed Compound, each Party shall cooperate fully (and cause its Affiliates to cooperate fully) with the other Party to facilitate a smooth and prompt transition of Collaboration Technology, information and materials that are necessary or useful for the receiving Party to exercise its licensed rights hereunder with respect to such Licensed Compound.

13.8 Survival Sections. In addition to the provisions set forth in Sections 13.5.2, 13.5.3 and 13.6 above, as applicable, the following provisions shall survive the expiration or termination of this Agreement for any reason: Articles 1 (Definitions), 7 (Payments, Books and Records), 10 (Confidentiality), 11 (Representations and Warranties), 12 (Indemnification), 13 (Term and Termination), 14 (Dispute Resolution) and 15 (Miscellaneous); and Sections 5.1.1 and 5.1.2.

## ARTICLE 14
## DISPUTE RESOLUTION

14.1 Escalation to Senior Executives. In the event of a dispute or matter of significant concern arises between the Parties, then at the request of either Party, the matter shall be escalated to a senior executive from each Party. Such senior executive shall be either the CEO or President of such Party, or another senior executive of such Party with the title of Vice President or higher and who has direct management responsibility for the matter in dispute. Upon such request, such senior executives shall make themselves reasonably available to meet, and shall meet either by telephone or if, specifically requested, in person, to attempt to resolve such matter, and shall thereafter continue to use good faith efforts to attempt to resolve such matter unless it becomes clear that the matter cannot be resolved by mutual agreement. Thereafter either Party may pursue such legal process as is otherwise available under applicable law.

14.2 Injunctive Relief. This Article 14 shall not be construed to prohibit either Party from seeking preliminary or permanent injunctive relief, restraining order or degree of specific performance in any court of competent jurisdiction to the extent not prohibited by this Agreement. For avoidance of doubt, any such equitable remedies provided under this Article 14 shall be cumulative and not exclusive and are in addition to any other remedies, which either Party may have under this Agreement or applicable law.

14.3 Matters to Proceed to Court. Notwithstanding the foregoing, any dispute relating to the determination of validity of a Party's patents or other issues relating solely to a Party's intellectual property and any dispute asserting breach of this Agreement or of the representations and warranties made hereunder shall be submitted exclusively to the federal court in Delaware, and the Parties hereby consent to the jurisdiction and venue of such court.

## ARTICLE 15
## MISCELLANEOUS

15.1 Governing Laws. This Agreement and any dispute arising from the construction, performance or breach hereof shall be governed by and construed, and enforced in accordance with, the laws of the state of Delaware, without reference to conflicts of laws principles.

15.2 Waiver. It is agreed that no waiver by either Party hereto of any breach or default of any of the covenants or agreements herein set forth shall be deemed a waiver as to any subsequent or similar breach or default.

15.3 Assignment. This Agreement shall not be assignable by either Party without the written consent of the other Party hereto, except either Party may assign this Agreement without such consent to its Affiliates, or to an entity that acquires all or substantially all of the business or assets of such Party whether by merger, reorganization, acquisition, sale, or otherwise; provided, however, that the assignee shall agree in writing to be bound by the terms and conditions of this Agreement, and that in the case of such an acquisition of all or substantially all of the business or assets of a Party, such assignment shall take effect upon written notice of such acquisition to the other Party. In addition, DOT-1 shall have the right to assign this Agreement to Millennium in connection with a Millennium Reversion. Notwithstanding any other provision in this Agreement, an assignment or Change of Control transaction involving Sunesis shall not be deemed to be a breach of this Agreement or otherwise require the acquirer or surviving entity following the Change of Control transaction to divest any products or research programs directed against a Raf Target which products or programs were being researched, developed or commercialized by the relevant Third Party acquirer prior to such assignment or Change of Control (a "Competing Program"), provided that such acquiror or surviving entity shall implement and enforce written processes and procedures to ensure that employees and other individuals working on or involved in the Competing Program shall not use or have access to the Sunesis Licensed Patents with respect to: the Raf Target, Licensed Compounds and Licensed Products; DOT-1 Collaboration Patents; Joint Collaboration Patents; Development Technology; Other DOT-1 Technology; and Confidential Information of DOT-1.

15.4 Independent Contractors. The relationship of the Parties hereto is that of independent contractors. The Parties hereto are not deemed to be agents, partners or joint venturers of the others for any purpose as a result of this Agreement or the transactions contemplated thereby.

15.5 Compliance with Laws. In exercising their rights under this license, the Parties shall fully comply in all material respects with the requirements of any and all applicable laws, regulations, rules and orders of any governmental body having jurisdiction over the exercise of rights under this license including those applicable to the development, manufacture, distribution, import and export and sale of Licensed Products pursuant to this Agreement.

15.6 Patent Marking. DOT-1 agrees to mark and use reasonable efforts to make all its Sublicensees mark all Licensed Products sold pursuant to this Agreement in accordance with the applicable statute or regulations relating to patent marking in the country or countries of manufacture and sale thereof. Sunesis agrees to mark and use reasonable efforts to make its Sublicensees mark all Reverted Licensed Products sold pursuant to this Agreement in accordance with the applicable statute or regulations relating to patent marking in the country or countries of manufacture and sale thereof.

15.7 Notices. All notices, requests and other communications hereunder shall be in writing and shall be personally delivered or by registered or certified mail, return receipt requested, postage prepaid, in each case to the respective address specified below, or such other address as may be specified in writing to the other Parties hereto and shall be deemed to have been given upon receipt:

| | |
|---|---|
| Sunesis: | Sunesis Pharmaceuticals, Inc.<br>[*] |
| With a copy to: | Cooley LLP<br>[*] |
| DOT-1 | DOT Therapeutics-1, Inc.<br>[*] |

15.8 Severability. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect to the fullest extent permitted by law without said provision, and the Parties shall amend the Agreement to the extent feasible to lawfully include the substance of the excluded term to as fully as possible realize the intent of the Parties and their commercial bargain. If a Party seeks to avoid a provision of this Agreement by asserting that such provision is invalid, illegal or otherwise unenforceable, the other Party shall have the right to terminate this Agreement upon [*] prior written notice to the asserting Party, unless such assertion is eliminated and cured within such [*] period. If DOT-1 has sought to so avoid a provision of this Agreement, such termination shall be deemed a termination by DOT-1 under Section 13.4 above, and if Sunesis has sought such an avoidance, such termination shall be deemed a termination by DOT-1 for breach by Sunesis under Section 13.2 above.

15.9 Advice of Counsel. Sunesis and DOT-1 have each consulted counsel of their choice regarding this Agreement, and each acknowledges and agrees that this Agreement shall not be deemed to have been drafted by one Party or another and will be construed accordingly.

15.10 Performance by Affiliates; Warranty. DOT-1 may exercise any right or discharge any obligation hereunder through any of its Affiliates. Each Party hereby warrants and guarantees the performance of any and all rights and obligations of this Agreement by its Affiliates and Sublicensees.

15.11 Complete Agreement. This Agreement with its Exhibits, constitutes the entire agreement, both written and oral, between the Parties with respect to the subject matter hereof, and all prior agreements, including the CDA, respecting the subject matter hereof, either written or oral, express or implied, shall be abrogated, canceled, and are null and void and of no effect. No amendment or change hereof or addition hereto shall be effective or binding on either of the Parties hereto unless reduced to writing and executed by the respective duly authorized representatives of Sunesis and DOT-1.

15.12 Amendment and Restatement. This Agreement constitutes an amendment and restatement of the Raf Agreement effective from and after the Effective Date. As of the Effective Date, the 2014 Amended and Restated Agreement is hereby amended, supplemented, modified and restated in its entirety as described herein.

15.13 Headings. The captions to the several Sections and Articles hereof are not a part of this Agreement, but are included merely for convenience of reference and shall not affect its meaning or interpretation.

15.14 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same agreement. This instrument may be executed by facsimile or electronically transmitted signatures and such signatures shall be deemed to bind each Party hereto as if they were original signatures.

* * * * *

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their authorized representatives and delivered in duplicate originals as of the Effective Date.

| **DOT-1 THERAPEUTICS, INC.** | | **SUNESIS PHARMACEUTICALS, INC.** | |
|---|---|---|---|
| By: | /s/ Julie P. Grant | By: | /s/ William Quinn |
| Name: | Julie Grant | Name: | William Quinn |
| Title: | Chief Executive Officer | Title: | Chief Financial Officer |

**EXHIBIT 1.14**
**DOT-1 Collaboration Patents**

**EXHIBIT 1.18**
**Joint Collaboration Patents**

**EXHIBIT 1.37**
**Sunesis Collaboration Patents**

**EXHIBIT 1.38**
**Sunesis Licensed Patents**

**EXHIBIT 8.2**
**Reverted Licensed Product**

**CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [*], HAS BEEN OMITTED BECAUSE IT IS NOT MATERIAL AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE AND CONFIDENTIAL.**

# LICENSE AGREEMENT

**dated February 10, 2021**

**by and between**

**Merck KGaA**

**and**

**Day One Biopharmaceuticals, Inc.**

# LICENSE AGREEMENT

This License Agreement (this "**Agreement**") is entered into as of February 10, 2021 (the "**Effective Date**") by and between:

**(1)** **Merck KGaA**, a corporation with general partners organized under the laws of Germany, located at Frankfurter Straße 250, 64293 Darmstadt, Germany ("**MRKDG**"); and

**(2)** **Day One Biopharmaceuticals, Inc.**, a corporation organized under the laws of Delaware, located at 395 Oyster Point Boulevard, Suite 217, San Francisco, CA 94080, USA ("**Company**").

MRKDG and Company each may be referred to herein individually as a "**Party**" or collectively as the "**Parties**."

## RECITALS

**WHEREAS**, MRKDG is engaged, among other activities, in the development of pharmaceutical products and is the holder of several rights in the Compounds (as defined below);

**WHEREAS**, MRKDG wishes to license to Company, on an exclusive basis, the right to Research, Develop, manufacture and Commercialize products comprising the Compounds in the Field (as each such capitalized term is defined below);

**NOW, THEREFORE**, in consideration of the promises and mutual covenants contained herein, the Parties agree to as follows.

## ARTICLE 1 DEFINITIONS

For purposes of this Agreement, the following capitalized terms will have the following meanings:

**1.1** "**Accounting Standards**" means GAAP or IFRS, as generally and consistently applied by the relevant party.

**1.2** "**Acquired COC Program**" has the meaning set forth in Section 11.7.

**1.3** "**Acquiring Person COC Program**" has the meaning set forth in Section 11.7.

**1.4** "**Action**" has the meaning set forth in Section 7.4(b)."**Affiliate**" means a Person that controls, is controlled by or is under common control with another Person, but only for so long as such control exists. For the purposes of this Section, the word "**control**" (including, with correlative meaning, the terms "**controlled by**" or "**under the common control with**") means the actual power, either directly or indirectly through one or more intermediaries, to direct the management and policies of such Person, whether by the ownership of at least fifty percent (50%) of the voting stock of such entity, or by contract or otherwise.

**1.5** "**Agreement**" has the meaning set forth in the preamble.

**1.6** "**Alliance Manager**" has the meaning set forth in Section 4.2.

**1.7** "**ANDA Filing**" has the meaning set forth in Section 7.6.

**1.8** "**Applicable Laws**" means any applicable supranational, federal, state, local or foreign law, statute, ordinance or principle of common law, or any rule, regulation, standard, judgment, order, writ, injunction, decree, arbitration award, agency guidelines or other requirement, license or permit of any Governmental Body, which may be in effect from time to time.

**1.9** "**Approval Application**" means an NDA or similar application or submission for a Product filed with a Regulatory Authority in a country or group of countries to obtain marketing approval for a biological or pharmaceutical product in that country or group of countries.

**1.10** "**Business Day**" means a day other than Saturday or Sunday on which banking institutions in New York, New York, Vaud, Switzerland and Darmstadt, Germany are open for business.

**1.11** "**Calendar Quarter**" means each three (3) month period commencing January 1, April 1, July 1 or October 1; *provided*, *however*, that (a) the first Calendar Quarter of the Term shall extend from the Effective Date to the end of the first full Calendar Quarter thereafter, and (b) the last Calendar Quarter of the Term shall end on the date of termination or expiration of this Agreement.

**1.12** "**Calendar Year**" means the period beginning on January 1 and ending on December 31 of the same year; *provided, however*, that (a) the first Calendar Year of the Term shall commence on the Effective Date and end on December 31 of the same year and (b) the last Calendar Year of the Term shall commence on January 1 of the Calendar Year in which this Agreement terminates or expires and end on the date of termination or expiration of this Agreement.

**1.13** "**Change of Control**" means, with respect to a Person: [*].

**1.14** [*].

**1.15** "**Clinical Trial**" means a clinical trial in human subjects that has been approved by a Regulatory Authority and institutional review board or ethics committee and is designed to measure the safety or efficacy of a pharmaceutical product. Clinical Trials shall include Phase I Trials, Phase II Trials and Phase III Trials.

**1.16** "**Code**" has the meaning set forth in Section 11.5.

**1.17** "**Commercial Milestone Event**" means each of the milestone events listed in Section 6.2(b).

**1.18** "**Commercial Milestone Payment**" has the meaning set forth in Section 6.2(b).

**1.19** "**Commercialization**," **"Commercializing**," or "**Commercialize**" means any and all activities undertaken before or after Regulatory Approval of an NDA for a particular Product and directed to the commercial exploitation of the Product, including the marketing, promoting, distributing, importing or exporting for sale, offering for sale, and selling of the Product, and interacting with Regulatory Authorities regarding the foregoing.

**1.20** "**Commercialization Plan**" has the meaning set forth in Section 3.2(b).

**1.21** "**Commercially Reasonable Efforts**" means, [*].

**1.22** "**Company**" shall have the meaning set forth in the preamble.

**1.23** "**Company Patents**" has the meaning set forth in Section 7.2(a).

**1.24** "**Company Publication**" has the meaning set forth in Section 8.2.

**1.25** "**Competing Product**" means [*].

**1.26** "**Compound**" means either (i) the MEK inhibitor known as MSC1936369B and as Pimasertib ("**Pimasertib**"), or (ii) the MEK inhibitor known as MSC2015103B ("**103B**"), in each case as described in **Schedule 1.26**. "**Compounds**" means both Pimasertib and 103B.

**1.27** "**Compound Inventory**" means the inventory of each Compound existing at MRKDG's facilities as at the Effective Date, except for inventory of Pimasertib reserved to complete the Existing Clinical Study and for the continued treatment of patients participating in the Existing Clinical Study. The Compound Inventory is listed in **Schedule 1.27**.

**1.28** "**Confidential Information**" of a Party means information relating to the business, operations or products of such Party or any of its Affiliates, including any Know-How that such Party discloses to the other Party under this Agreement, or otherwise becomes known to the other Party by virtue of this Agreement.

**1.29** "**Control**" or "**Controlled**" means, with respect to (a) Patent Rights, (b) Know-How or (c) biological, chemical or physical material, that the Party or one of its Affiliates owns or has a license or sublicense to such right, item, or material (or in the case of material, has the right to physical possession of such material) and has the ability to grant a license or sublicense to, or assign its right, title and interest in and to, such right, item or material as provided for in this Agreement without violating the terms of any agreement or other arrangement with any Third Party, in particular such Third Party that has assigned or licensed such Patent Rights, Know-How or material to such Party (or any Affiliate of such Party).

**1.30** "**Data Protection Law**" means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the "**General Data Protection Regulation**") as well as, if applicable, any other data protection laws of the country in which Company is established and any data protection laws applicable to Company in connection with this Agreement. "**Personal Data**" as used in this Agreement shall mean any information relating to an identified or identifiable natural person as defined in the General Data Protection Regulation.

**1.31** "**Development**" means, with respect to a Compound or Product, all clinical and non-clinical research and development activities conducted after filing of an IND for such Compound or Product, including toxicology, pharmacology test method development and stability testing, process development, formulation development, delivery system development, quality assurance and quality control development, statistical analysis, Clinical Trials (other than post-Marketing Approval Clinical Trials), regulatory affairs, pharmacovigilance, Clinical Trial regulatory activities and obtaining and maintaining Marketing Approval. When used as a verb, "**Develop**," "**Developed**," or "**Developing**" means to engage in Development.

**1.32** "**Development Plan**" shall have the meaning set forth in Section 3.1(b).

**1.33** "**EMA**" means the European Medicines Agency, or any successor agency thereto.

**1.34** "**European Commission**" means the authority within the European Union that has the legal authority to grant Regulatory Approvals in the European Union based on input received from the EMA or other competent Regulatory Authorities.

**1.35** "**European Union**" or "**EU**" means the European Union, as may be redefined from time to time.

**1.36** "**Existing Clinical Studies**" means the clinical studies conducted under the Existing License which are listed in **Schedule 1.36**.

**1.37** "**Existing License**" means that certain Strategic Collaboration Agreement between Ares Trading S.A., with place of business at Z.I de l'Ouriettaz, CH-1170 Aubonne, Switzerland ("**ATSA**"), an Affiliate of MRKDG, and the Existing Licensee dated November 21, 2016, as amended, and the Study Order No. 14 thereunder dated March 1, 2020, pursuant to which ATSA has granted certain non-exclusive rights and licenses to [*], an electronic, redacted copy of which was made available to Company.

**1.38** "**Existing Licensee**" means [*].

**1.39** "**FD&C Act**" means the United States Federal Food, Drug, and Cosmetic Act, as amended, and the rules and regulations promulgated thereunder.

**1.40** "**FDA**" means the United States Food and Drug Administration, or any successor agency thereto.

**1.41** "**Field**" means all prophylactic, palliative, therapeutic or diagnostic uses in humans or animals in all Indications.

**1.42** "**First Commercial Sale**" means the first sale or commercial transfer or disposition for value of the Product to a Third Party by Company, its Affiliates or Sublicensees.

**1.43** "**FTE**" means [*] devoted to activities under this Agreement, including providing cooperation, assistance or support to MRKDG under this Agreement, that is carried out by one or more qualified employees of MRKDG or its Affiliates. [*].

**1.44** "**FTE Rate**" means [*].

**1.45** "**Governmental Body**" means any (a) nation, principality, state, commonwealth, province, territory, county, municipality, district, or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign, or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, board, instrumentality, officer, official, representative, organization, unit, body, or entity and any court or other tribunal); (d) multi-national or supranational organization or body; or (e) individual, entity, or body exercising, or entitled to exercise, any executive, legislative, judicial, administrative, regulatory, police, military, or taxing authority or power of any nature.

**1.46** "**IFRS**" means the International Financial Reporting Standards set of accounting standards and interpretations and the framework in force on the Effective Date and adopted by the European Union as issued by the International Accounting Standards Board and the International Financial Reporting Interpretations Committee, as such accounting standards may be amended from time to time.

**1.47** "**Improper Conduct**" has the meaning set forth in Section 13.1.

**1.48** "**IND**" means an investigational new drug application filed with the FDA or the equivalent application or filing filed with any equivalent agency or Governmental Body outside the United States (including any supra-national entity such as in the European Union) for approval to commence Clinical Trials in such jurisdiction, and including all regulations at 21 U.S. CFR § 312 et seq. and equivalent foreign regulations.

**1.49** "**Indemnified Party**" has the meaning set forth in Section 10.3.

**1.50** "**Indemnifying Party**" has the meaning set forth in Section 10.3.

**1.51** "**Indication**" means a generally acknowledged disease or condition, a significant manifestation of a disease or condition, or symptoms associated with a disease or condition, or a risk for a disease or condition for which an NDA may be obtained.

**1.52** "**Know-How**" means any: (a) scientific or technical information, results and data of any type whatsoever, in any tangible or intangible form whatsoever, that is not in the public domain or otherwise publicly known, including discoveries, inventions, trade secrets, devices, databases, practices, protocols, regulatory filings, methods, processes (including manufacturing processes, specification and techniques), techniques, concepts, ideas, specifications, formulations, formulae, data (including pharmacological, biological, chemical, toxicological, clinical and analytical information, quality control, trial and stability data), case reports forms, medical records, data analyses, reports, studies and procedures, designs for experiments and tests and results of experimentation and testing (including results of research or development), summaries and information contained in submissions to and information from ethical committees, or Regulatory Authorities, and manufacturing process and development information, results and data, whether or not patentable; and (b) compositions of matter, cells, cell lines, assays, animal models and physical, biological or chemical material, including drug substance samples, intermediates of drug substance samples, drug product samples and intermediates of drug product samples. The fact that an item is known to the public shall not be taken to exclude the possibility that a compilation including the item, or a development relating to the item, is (and remains) not known to the public. "Know-How" includes any rights including copyright, database or design rights protecting such Know-How. "**Know-How**" excludes Patent Rights.

**1.53 "Detailed Asset Transfer Plan"** has the meaning set forth in Section 2.5(a).

**1.54** "**Licensee Indemnitees**" has the meaning set forth in Section 10.1.

**1.55** "**Losses**" has the meaning set forth in Section 10.1.

**1.56** "**Major Asian Market**" means [*].

**1.57** "**Major Market**" means any of [*].

**1.58** "**Marketing Approval**" or "**MA**" means, with respect to a Product in a particular jurisdiction, all approvals, licenses, registrations, or authorizations necessary for the Commercialization of such Product in such jurisdiction, including, with respect to the United States, approval of an Approval Application for such Product by the FDA and with respect to the European Union, approval of an Approval Application for such Product by the European Commission or the applicable Regulatory Authority in any particular country in the EU. [*].

**1.59** "**Milestone Payment**" shall have the meaning set forth in Section 6.2(a).

**1.60** "**MRKDG**" shall have the meaning set forth in the preamble.

**1.61** "**MRKDG Indemnitees**" has the meaning set forth in Section 10.2.

**1.62** "**MRKDG Know-How**" means all Know-How specifically related to the Compounds that is owned or Controlled by MRKDG as of the Effective Date and is necessary for the Research, Development, manufacture, use, or Commercialization of the Compounds or Products in the Field, including, without limitation, the Know-How as described on **Schedule 2.5** hereto. For clarity, "**MRKDG Know-How**" does not include Know-How that is generated under the Existing License from the conduct of the Existing Clinical Studies ("**Excluded Know-How**").

**1.63** "**MRKDG Patents**" means the Patent Rights set forth on **Schedule 1.63** hereto.

**1.64** "**MRKDG Technology**" means the MRKDG Know-How and the MRKDG Patents, collectively.

**1.65** "**NDA**" means a New Drug Application filed pursuant to the requirements of the FDA, as more fully defined in 21 U.S. CFR § 314.3 et seq., a Biologics License Application filed pursuant to the requirements of the FDA, as more fully defined in 21 U.S. CFR § 601, and any equivalent application submitted in any country in the Territory, including all additions, deletions or supplements thereto, and as any and all such requirements may be amended, or supplanted, at any time.

**1.66** "**Net Sales**" means [*].

**1.67** "**Party**" or "**Parties**" shall have the meaning set forth in preamble.

**1.68** "**Patent Right(s)**" means (a) all national, regional and international patents and patent applications, including provisional patent applications, (b) all patent applications filed either from such patents, patent applications or provisional applications or from an application claiming priority from either of these, including divisionals, continuations, continuations-in-part, converted provisionals and continued prosecution applications, (c) any and all patents that have issued or in the future issue from the foregoing patent applications ((a) and (b)), including utility models, petty patents and design patents and certificates of invention, (d) any and all extensions or restorations by existing or future extension or restoration mechanisms, including revalidations, renewals, reissues, re-examinations and extensions (including any supplementary protection certificates and the like) of the foregoing patents or patent applications set forth in clauses (a), (b), and (c).

**1.69** "**Person**" means any natural person, corporation, firm, business trust, joint venture, association, organization, company, partnership or other business entity, or any government or agency or political subdivision thereof.

**1.70** "**Phase I Trial**" means a Clinical Trial in which the Product is administered to human subjects at multiple dose levels with the primary purpose of determining safety, metabolism, and pharmacokinetic and pharmacodynamic properties of the Product, and consistent with 21 U.S. CFR § 312.21(a).

**1.71** "**Phase II Trial**" means a Clinical Trial of the Product in human patients, the principal purposes of which are to make a preliminary determination that the Product is safe for its intended use, to determine its optimal dose, and to obtain sufficient information about the Product's efficacy to permit the design of Phase III Trials, and consistent with 21 U.S. CFR 312.21(b).

**1.72** "**Phase III Trial**" means a human Clinical Trial of the Product, which trial is designed (a) to establish that the Product is safe and efficacious for its intended use; (b) to define warnings, precautions and adverse reactions that are associated with the Product in the dosage range to be prescribed; and (c) consistent with 21 U.S. CFR § 312.21(c).

**1.73** "**Price Approval**" means, in any country where a Governmental Body authorizes reimbursements for, or approves or determines pricing for, pharmaceutical products with respect to public or private payors, receipt (or, if required to make such authorization, approval or determination effective, publication) of such reimbursement authorization or pricing approval or determination for any such payor or group of payors.

**1.74** "**Product**" means any pharmaceutical product, including any dosage form or formulation thereof, that contains or comprises, in whole or in part, a Compound.

**1.75** "**Regulatory Approval**" means any and all approvals, licenses, registrations, or authorizations of the relevant Regulatory Authority necessary for the Development, manufacture or Commercialization of a Product in a particular country or jurisdiction. For the purpose of the Milestone Payments, Regulatory Approval corresponds to the receipt of notice from the relevant Regulatory Authority that the NDA filed for a Product with such Regulatory Authority meets the criteria for acceptance or, in the absence of such notice, the delivery of the Marketing Approval by the relevant Regulatory Authority.

**1.76** "**Regulatory Authority**" means (a) in the US, the FDA, (b) in the EU, the EMA or the European Commission, or (c) any Governmental Body with similar regulatory authority over pharmaceutical or biotechnology products in any other jurisdiction anywhere in the world.

**1.77** "**Regulatory Materials**" means, in consideration of the Development status of the Compound or Product, all applicable regulatory registrations, applications, authorizations, approvals (including approvals of NDAs, supplements and amendments, pre- and post-approvals, Pricing Approvals and labeling approvals, and INDs) and other submissions made to or with any Regulatory Authority, including drug master files, for Development (including the conduct of Clinical Trials), manufacture or Commercialization of a Compound or Product in a country or regulatory jurisdiction, together with all related correspondence to or from any Regulatory Authority and all documents referenced in the complete regulatory chronology for each NDA, including any US Certificate of Pharmaceutical Product.

**1.78** "**Regulatory Milestone Event**" means each of the milestone events listed in Section 6.2(a).

**1.79** "**Regulatory Milestone Payment**" shall have the meaning set forth in Section 6.2(a).

**1.80** "**Research**" means conducting research activities to discover, design, optimize, deliver and advance Compound and Products, including pre-clinical studies and optimization, but specifically excluding Development, manufacture, and Commercialization. When used as a verb, "**researching**" means to engage in Research.

**1.81** "**Review Period**" has the meaning set forth in Section 8.2.

**1.82** "**Royalty Term**" has the meaning set forth in Section 6.3(c).

**1.83** "**Safety Data Exchange Agreement**" has the meaning set forth in Section 3.7(b).

**1.84** [*].

**1.85** "**Selling Party**" has the meaning set forth in Section 1.66.

**1.86** "**Senior Officers**" means a member of senior management of a Party who is designated by such Party to resolve disputes under this Agreement.

**1.87** "**Sublicensee**" means a Person to which Company has, pursuant to Section 2.2, granted sublicense rights under any of the license rights granted under Section 2.1.

**1.88** "**TC**" shall have the meaning set forth in Section 4.1(a).

**1.89** "**Term**" shall have the meaning set forth in Section 11.1.

**1.90** "**Terminated Product**" has the meaning set forth in Section 11.8(g).

**1.91** "**Territory**" means all the countries in the world.

**1.92** "**Third Party**" means any Person other than Company, MRKDG, or their respective Affiliates.

**1.93** "**Third Party Action**" has the meaning set forth in Section 7.5(a).

**1.94** "**United States**" or "**US**" means the United States of America.

**1.95** "**USD**" or "**$**" means the lawful currency of the United States.

**1.96** "**Valid Claim**" means a claim of a pending, or issued and unexpired patent which has not lapsed or been revoked, abandoned or held unenforceable or invalid by a final decision of a court or Governmental Body of competent jurisdiction, unappealable or unappealed within the time allowed for appeal, and which has not been disclaimed, denied or admitted to be invalid or unenforceable through reissue, reexamination or disclaimer or otherwise.

**1.97** "**VAT**" means value added tax.

## ARTICLE 2 GRANT OF LICENSE

**2.1 Grant of License**. Subject to the terms and conditions of this Agreement, and subject to the rights granted to Existing Licensee under the Existing License with respect to Pimasertib, MRKDG (on behalf of itself and its Affiliates) hereby grants to Company an exclusive (even as to MRKDG and its Affiliates), upfront-, milestone- and royalty-bearing right and license (with the right to grant sublicenses through multiple tiers, subject to the provisions of Section 2.2) to Research, Develop, have Developed, make, have made, use, keep, sell, offer for sale, import, export, and Commercialize the Compounds and Products in the Field in the Territory, under the MRKDG Technology. For clarity, the foregoing license grant includes the right to Research, Develop, have Developed, make, have made, use, keep, sell, offer for sale, import, export, and Commercialize Products as monotherapies as well as for use in combination (including concomitant or sequential therapy lines) with other Company or Third Party proprietary products.

**2.2 Grant of Sublicense by Company**. Effective commencing on the Effective Date, Company shall have the right to grant sublicenses, in whole or in part, through multiple tiers, under the license granted in Section 2.1. Each such sublicense will be consistent with the terms of this Agreement and will require such Sublicensee to comply with all applicable terms of this Agreement. Company will remain responsible for each Sublicensee's compliance with the applicable terms of this Agreement. Within [*] after the grant of a sublicense, Company will provide a true copy of such sublicense to MRKDG; *provided*, that such copy may be redacted except as necessary for MRKDG to ensure such sublicense complies with the terms hereof.

**2.3 Grant Back License**. Effective commencing on the Effective Date, Company hereby grants to MRKDG a non-exclusive, royalty-free, fully-paid up, sublicensable, worldwide grant back license under the MRKDG Technology relating to Pimasertib solely as necessary to enable MRKDG's and the Existing Licensee's use of such MRKDG Technology for completion of the ongoing Existing Clinical Studies. On an Existing Clinical Study-by-Existing Clinical Study basis, the foregoing grant back license will terminate upon the termination or conclusion of such Existing Clinical Study.

**2.4 Pre-Clinical Research Collaborations prior to the Effective Date**. Notwithstanding anything stated herein to the contrary, Company appreciates that MRKDG has entered into preclinical collaborations with Third Parties in the past, with respect to Pimasertib and 103B, including but not limited to those listed in **Schedule 2.4**. Based on the information available to the Parties as at the Effective Date, it is the Parties' mutual understanding that the Know-How generated in such collaborations is not necessary for the Development and Commercialization of Compounds and Products by Company after the Effective Date, and therefore not included in the scope of this Agreement. Should either Party become aware, after the Effective Date, that any such Know-How is necessary for the Development and Commercialization of Compounds and Products by Company, the Parties will collaborate in good faith regarding the inclusion of any such Know-How Controlled by MRKDG in this Agreement, and transfer of such Know-How to Company. MRKDG will use

Commercially Reasonable Efforts to provide Company with data Controlled by MRKDG resulting from such preclinical collaborations, which data, to the extent provided to Company, shall be included in the definition of MRKDG Know-How, subject to the rights and licenses (in each case non-commercial only) granted to the collaboration partner, if any. Company further acknowledges and agrees that such collaborations might result in publications by MRKDG or MRKDG's collaboration partner still after the Effective Date. MRKDG will use Commercially Reasonably Efforts to bring such publication manuscripts to the attention of Company prior to publication, and to work with the respective collaboration partner regarding an amendment of such manuscripts as desired by Company.

**2.5 Transfer**.

(a) Transfer of MRKDG Know-How. MRKDG shall transfer to Company all of the MRKDG Know-How, including the documents, databases and assets Controlled by MRKDG as listed in **Schedule 2.5,** pursuant to a detailed plan regarding the transfer of MRKDG Know-How to Company ("**Detailed Asset Transfer Plan**"). The Parties shall use Commercially Reasonable Efforts to agree upon the Detailed Asset Transfer Plan within [*] after the Effective Date. Such transfer shall take place in an orderly fashion and in a manner such the value, usefulness and confidentiality of the transferred MRKDG Know-How are preserved in all material respects. Notwithstanding the foregoing, within [*] after the Effective Date, Company shall have in place a system to allow the transfer of global safety database ownership for the Products by MRKDG. Upon notification by Company of its readiness for safety database, the Parties shall collaborate in good faith to initiate and complete the transfer of such global safety database for the Compounds to Company. Until the ownership of the global safety database is transferred to Company, upon Company's request and subject to Section 2.5(d), MRKDG will provide to Company assistance with inquiries from, and filings to, Regulatory Authorities that require access to the global safety database. If any MRKDG Know-How resides at a MRKDG vendor (including, but limited to, contract research organizations and academic research institutions (excluding Existing Licensee)) and requires MRKDG to fulfill the transfer by contacting that vendor, all requests and vendor contact will be originated and facilitated by MRKDG, with electronic copies (e.g., inclusion on emails) to Company. Upon the request of Company, MRKDG will introduce Company to any such Third Party vendor and reasonably cooperate with Company's efforts to enter into an agreement with such Third Party (if any).

(b) Regulatory Transfer. Excluding any clinical trial agreements or other regulatory filings submitted to Regulatory Authorities relating solely to the Existing Clinical Trials, within [*] after the Effective Date, MRKDG shall assign to Company, at Company's cost and expense subject to Section 2.5(d), all applications and filings made by or on behalf of MRKDG with the FDA to enable transfer of ownership of the IND [*] to Company, with respect to the Compound or a Product. Further details regarding such transfer will be specified in Schedule 2.5.

(c) Manufacturing Transfer. Without limiting the foregoing, within [*] after the Effective Date, MRKDG and its Affiliates shall conduct or cause their Third Party subcontractors to conduct a transfer of documentation and knowledge of any manufacturing process(es) for the Compounds Controlled by MRKDG as of the Effective Date, including by providing copies of such documents and information, as are necessary or reasonably useful to enable Company (or its designee) to conduct manufacturing of the Compounds and Products in accordance with Applicable Law, which transfer shall be at Company's cost subject to Section 2.5(d), except that transfer support assistance for the manufacturing transfer will be provided during [*]after the Effective Date.

(d) Transfer Support Assistance. During the [*] after the Effective Date, upon Company's request, MRKDG will provide to Company up to [*] of assistance to support the transfer of MRKDG Know-How pursuant to Sections 2.5(a)-(c), including by MRKDG's representatives participating in the TC in accordance with Section 4.1 but solely to the extent such assistance involves providing scientific or technical assistance as well as support activities in context of Section 3.7 as required. In the event that Company requires more than the aforementioned [*] of assistance, MRKDG shall provide such assistance at Company's cost and expense subject to the FTE Rate and reasonable

out of pocket expenses. In any case, Company shall provide reasonable advance notice to MRKDG on the need of assistance, and the Parties shall co-operate in good faith to ensure that MRKDG's assistance can be provided without undue disruption to either Party's business needs. Without limiting the generality of the foregoing, for [*] following the Effective Date, MRKDG will provide Company with access to MRKDG key contact persons who can answer questions on a limited basis in the areas of biology, pharmacology/DMPK, toxicology, regulatory, safety, clinical development, clinical operations, CMC, and medical affairs for the Compounds or Products.

## ARTICLE 3 RESEARCH, DEVELOPMENT AND COMMERCIALIZATION

**3.1 Research and Development of Product by Company**.

(a) Generally. Subject to the exception under Section 3.1(d), effective commencing on the Effective Date, Company shall have the exclusive right and responsibility to manufacture, Research and Develop the Compounds and Products in any Indication in the Field in the Territory and to conduct (either itself or through its Affiliates, agents, subcontractors, or Sublicensees) all Clinical Trials and non-clinical studies Company believes appropriate to obtain Regulatory Approval for the Products in any Indication in the Field in the Territory.

(b) Development Plan. The Development of each Product shall be governed by a development plan which is attached to this Agreement as **Schedule 3.1**, that describes the proposed overall program of Development, the Development assumptions, Development steps and personnel commitment of Company and which shall in particular include, in each case with estimated timelines and milestones to be achieved by Company [*] (the "**Development Plan**").

(c) Updates to Development Plan. Company shall update and amend the Development Plan as appropriate, in Company's sole discretion, acting in good faith. In case of any material change (as determined by Company, acting in good faith), Company shall provide the respective updated Development Plan to MRKDG without delay.

(d) Existing Clinical Studies. Notwithstanding anything herein to the contrary, MRKDG (itself or through its Affiliates or through any Third Party under contract with MRKDG as of the Effective Date with respect to the Existing Clinical Studies) shall have the right to complete the Existing Clinical Studies. For clarity, MRKDG (itself or through its Affiliates or through any Third Party) may not initiate any new Clinical Trial for Pimasertib during the Term. MRKDG shall not and shall ensure that its Affiliates and Existing Sublicensee do not use any Excluded Know-How for the further Development or Commercialization of Pimasertib or any Product containing or comprising Pimasertib.

**3.2 Commercialization**.

(a) Subject to the terms and conditions of this Agreement, effective commencing on the Effective Date, Company shall have the exclusive right and responsibility to manufacture and Commercialize the Products in the Territory itself or through one or more Third Parties selected by Company and shall have the responsibility in all matters relating to the manufacture and Commercialization of the Products in the Territory.

(b) The Commercialization of each Product shall be governed by a commercialization plan that describes the proposed overall program of Commercialization, including [*] (the "**Commercialization Plan**"). The Commercialization Plan shall be prepared by Company, acting in good faith, at least [*] prior to the expected date of Commercialization of the first Product and submitted to MRKDG. Such Commercialization Plan shall thereafter be updated by Company, acting in good faith, at least [*].

**3.3 Company Diligence**. Effective commencing on the Effective Date, Company (either itself or through its Affiliates or sublicensees) shall use Commercially Reasonable Efforts to Develop and Commercialize [*] Products (whether as a monotherapy, Combination Product or for use in concomitant or sequential therapy with one or more other therapeutics) in [*] Major Markets by [*].

**3.4 Manufacturing and Supply**.

(a) Compound Inventory. Within [*] days after the Effective Date, MRKDG shall transfer and deliver to Company the Compound Inventory. In addition, MRKDG will use Commercially Reasonable Efforts to locate and, if available, will transfer to Company related materials for the Compounds as listed on **Schedule 3.4(a)**. Delivery shall be [*]. It is understood between the Parties that the Compound Inventory in the form of drug substance will be transferred from MRKDG to Company while the Compound Inventory in the form of drug product, which is stored at MRKDG's contract manufacturing organization, will be transferred upon Company's request. If necessary, MRKDG will authorize its contract manufacturing organization (e.g., by letter) to transfer the Compound Inventory in the form of drug product to Company or Company's designee.

(b) Payment term. Payment of packaging and shipping costs and expenses shall be due within [*] after receipt by Company of a corresponding invoice from MRKDG.

(c) Accompanying documentation. All Compound Inventory delivered to Company hereunder shall be accompanied by relevant documentation including a certificate of analysis.

(d) No Further Supply Obligation. Other than the obligations in Section 2.5(a) and delivery of Compound Inventory, as provided in Sections 3.4(a) and (b), MRKDG shall have no further obligation regarding the manufacturing and supply of Compound and Company shall be solely responsible to manufacture any additional needs of Compound, or procure any additional needs of Compound from a Third Party manufacturing organization, at its own risk and cost. Upon the request of Company, MRKDG will introduce Company to such Third Party manufacturing organization and reasonably cooperate with Company's efforts to enter into an agreement with such Third Party (if any).

**3.5 Reporting Obligations**. Company shall, [*], provide MRKDG with a written report summarizing in reasonable detail its Development and, as applicable, Commercialization activities conducted during [*].

**3.6 Trademarks**. Effective commencing on the Effective Date, Company shall have the sole authority to select trademarks in connection with the Commercialization of any Product in the Field in the Territory and shall own all such trademarks. Company will not use nor seek to register, anywhere in the Territory, any trademark that is confusingly similar to any trademark used by or on behalf of MRKDG, its Affiliates or Sublicensees in connection with any Product.

**3.7 Regulatory Matters and Pharmacovigilance**.

(a) Regulatory Filings. Effective commencing on the Effective Date, subject to Section 2.5(b), Company shall be responsible for and shall own and maintain all Regulatory Materials and Regulatory Approvals for the Compounds and Products, including all INDs and NDAs, and shall be solely responsible for all communications with Regulatory Authorities with respect to the Compounds and Products, sponsored by or initiated on behalf of the Company. For the Existing Clinical Trial, MRKDG and its Existing Licensee and contractors shall have the right to communicate with Regulatory Authorities with respect to such Existing Clinical Trial as required by Applicable Law. MRKDG will keep Company promptly advised of any such communications that are material to the Research, Development, manufacture and Commercialization of Pimasertib and related Products, based on the information available to MRKDG under the Existing License Agreement.

(b) Adverse Event Reporting. The Parties agree to comply with any and all Applicable Laws that are applicable as of the Effective Date and thereafter during the Term in connection with a Compound/Product's safety data collection and reporting. The sponsor of a Clinical Trial shall be solely accountable for reporting all information required to be submitted to health authorities, ethic committees, institutional review boards and investigators as required by Applicable Laws and regulations concerning its sponsored Clinical Trial(s). Company shall be the marketing authorization holder and shall be solely responsible for reporting all information required to be submitted to health authorities in order to maintain any health authority approval granted for the Product(s) in the Territory. If required by Applicable Laws, the Parties (or their respective Affiliates) shall negotiate in good faith and enter into a safety data exchange agreement (such written agreement, the "**Safety Data Exchange Agreement**") for exchanging adverse event and other safety information relating to the Compounds. Unless otherwise agreed and defined in the Safety Data Exchange Agreement, until the transfer of IND No. [*] and global safety database ownership is completed, if either Party has or receives any new safety information which may be related to the use of the Compounds or Products and which may have an impact to the reporting obligations of the other Party under Applicable Laws, such Party shall provide the other Party with all such information in English within such reasonable timelines which enable such other Party to comply with all Applicable Laws and relevant regulations and requirements. Subject to the Existing License, Company shall have the sole decision and right to determine whether and how to implement a recall or other market withdrawal of any Product Developed or Commercialized by Company. The information exchanged between the Parties pursuant to this Section 3.7(b) shall be transmitted by e-mail, facsimile or overnight courier to the following address:

Transmission to Company:

Attn: [*] Day One Biopharmaceuticals, Inc., 395 Oyster Point Boulevard, Suite 217, San Francisco, CA 94080, USA; Email: [*]

Transmission to MRKDG:

[*]

Merck KGaA, Frankfurter Strasse 250, D-64293 Darmstadt, Germany, [*]

**3.8 Applicable Laws.** Company will, and will require it Affiliates, Sublicensees, and subcontractors to, comply with all Applicable Laws in its and their Research, Development, manufacture, and Commercialization of Compound and Product, including where appropriate cGMP, GCP, and GLP (or similar standards). Without limiting the foregoing, Company will not engage directly or indirectly, in any capacity in connection with this Agreement any Person who either has been debarred by the FDA, is the subject of a conviction described in section 306 of the FD&C Act or subject to any such similar sanction. MRKDG will, and will require it Affiliates, the Existing Licensee and subcontractors to, comply with all Applicable Laws in the conduct of the Existing Clinical Trials, including where appropriate cGMP, GCP, and GLP (or similar standards).

**3.9 Right of Reference.** MRKDG and its Affiliates hereby grant to Company and its Affiliates a right of reference to all Regulatory Materials Controlled by MRKDG and its Affiliates relating to the Compounds or Products solely for the purpose of Company and its Affiliates to Research, Develop, manufacture and Commercialize the Compounds and Products in the Field in the Territory. Company and its Affiliates hereby grant to MRKDG, its Affiliates and the Existing Licensee a right of reference to all Regulatory Materials Controlled by Company and its Affiliates relating to Pimasertib solely for the purpose of MRKDG, its Affiliates and the Existing Licensee to complete the Existing Clinical Trials. Each Party will take such actions as may be reasonably requested by the other Party to give effect to the intent of this section, including providing a cross-reference letter or similar communication to the applicable Regulatory Authority to effectuate such right of access and reference.

**3.10 Existing Clinical Studies.** Without limiting the generality of Section 3.9, upon assignment of the IND No. [*] to Company according to Section 2.5(b) until completion or termination of the Existing Clinical Studies, Company will maintain the IND No. [*] and will take all actions necessary to enable the Existing Licensee to complete the Existing Clinical Studies based on the existing cross-reference to the IND No. [*], including by providing IB updates to the Regulatory Authority and the Existing Licensee as applicable, and maintaining the CMC-related information (e.g. module 3) comprised in IND No. [*] in such a way that MRKDG's ability to supply its reserved inventory of Pimasertib to Existing Licensee or the use of such Compound Inventory by Existing Licensee for purpose of the Existing Clinical Studies is not negatively affected. If Existing Licensee requires any additional quantities of Pimasertib (i.e. in excess of the amount reserved by MRKDG) for conducting the Existing Clinical Studies or continued treatment of patients who participated in the Existing Clinical Studies after completion or termination of the Existing Clinical Studies, Company shall supply such quantities to Existing Licensee, and shall negotiate in good faith with Existing Licensee regarding a respective supply agreement between Company and Existing Licensee. MRKDG shall use Commercially Reasonable Efforts to cause the Existing Licensee to enter into good faith negotiations with Company regarding necessary agreements, e.g. pharmacovigilance with respect to the Existing Clinical Studies, if required by Applicable Laws. Company acknowledges and agrees that it will not use any data that Company may receive from Existing Licensee under such pharmacovigilance agreement or otherwise, that relates to any compound or product other than Compounds and Products (in particular, Company will not process, edit, analyze or publish any such data relating to any compound or product other than Compounds and Products), without MRKDG's prior written consent.

## ARTICLE 4 GOVERNANCE

**4.1 Transition Committee**.

(a) Formation. Within [*] days after the Effective Date, the Parties will establish a transition committee (the "**TC**"). The TC will be comprised of [*] representatives from each Party. In addition, each Party may invite a reasonable number of additional representatives to participate in discussions and meetings of the TC, subject to the other Party's prior approval. Each Party's representatives on the TC and all other individuals participating in discussions and meetings of the TC on behalf of a Party will be subject to confidentiality and non-use obligations with respect to information disclosed at such meeting that are no less restrictive than the provision of Article 8. [*] will designate the chairperson of the TC. The TC will conduct its responsibilities hereunder in good faith and with reasonable care and diligence.

(b) Responsibilities. The TC will:

(i) develop a process for the secure transfer of MRKDG Know-How to Company;

(ii) review, discuss and oversee the transfer from MRKDG to Company of the MRKDG Know-How including transfer of IND No. [*] and other items in accordance with Section 2.5;

(iii) review, discuss and oversee the transfer from MRKDG to Company of the Compound Inventory in accordance with Section 3.4; and

(iv) perform such other duties as are specifically assigned to the TC under this Agreement.

(c) Meetings; Minutes.

(i) The TC will meet in person or per videoconference or conference call at least [*] following the Effective Date, and thereafter at least [*] on such dates and at such times and places as agreed to by the members of the TC. [*].

(ii) The Alliance Managers will provide the members of the TC with draft written minutes for approval from each meeting within [*] after each such meeting. The responsibility for preparing the minutes will alternate between the Alliance Managers on a meeting-by-meeting basis. If the minutes of any meeting of the TC are not approved by the TC (with each Party's representatives on the TC collectively having one vote) within [*] Business Days after the meeting, the objecting Party will append a notice of objection with the specific details of the objection to the proposed minutes.

(d) Decision-Making. The TC will provide a forum for the Parties to plan, oversee and monitor the Parties' activities under this Agreement, but shall have no decision-making authority hereunder or authority to modify the terms hereunder. If the TC is unable to reach consensus with respect to a particular matter within the scope of its planning, oversight and monitoring function for more than [*], Section 13.17 shall apply.

(e) Adjustment of Composition and Meeting Frequency, Discontinuation. Upon completion of the transfer of the MRKDG Know-How in accordance with Section 2.5 and the transfer of Compound Inventory to Company as set forth in Section 3.4(a), the TC shall determine its composition and meeting frequency which shall apply following such completion. The TC shall be discontinued upon completion of the Existing Clinical Studies.

(f) Other Committees. The Parties may, by mutual agreement, form such other committees or working groups as may be necessary or desirable to facilitate activities under this Agreement. Each such committee or working group will have no decision-making authority under this Agreement.

**4.2 Alliance Managers**. Each Party will appoint a representative of such Party to act as its alliance manager under this Agreement (each, an "**Alliance Manager**"). Each Party may replace its Alliance Manager at any time upon notice to the other Party. The initial Alliance Managers shall be:

For Company: [*]

For MRKDG: [*]

**4.3 Specific Responsibilities**. The Alliance Managers may attend meetings of the TC but may not be members of the TC. The Alliance Managers will have the following responsibilities:

(a) schedule meetings of the TC and set the agenda for meetings of the TC in each case with input from the TC members, and circulate draft written minutes;

(b) facilitate the flow of information and otherwise promote communication, coordination and collaboration between the Parties;

(c) serve as the primary contact point between the Parties for the purpose of providing each Party with information regarding the other Parties' activities pursuant to this Agreement; and

(d) perform such other functions as requested by the TC.

## ARTICLE 5 [INTENTIONALLY OMITTED]

## ARTICLE 6 FINANCIAL TERMS

**6.1 Upfront and Near-Term Payments**. In partial consideration for the grant of the rights and licenses hereunder, within [*] after the Effective Date, Company shall pay to MRKDG the upfront non-refundable, non-creditable sum of Eight Million USD ($8,000,000.00), such amount payable by wire transfer of immediately available funds. In addition, Company shall pay to MRKDG the following one-time, non-refundable and non-creditable sums upon achievement of the appliable event: (i) [*] upon [*] and (ii) [*] upon [*], in each case within [*] after the achievement of the corresponding event, such amount payable by wire transfer of immediately available funds.

**6.2 Milestone Payments**.

(a) Effective commencing on the Effective Date, as further partial consideration for the grant of the rights and licenses hereunder, on a Product-by-Product basis, Company shall pay, or cause to be paid, to MRKDG the non-refundable milestone payments set forth below (each, a "**Regulatory Milestone Payment**") for the first Product containing or comprising Pimasertib, as well as for the first Product containing or comprising 103B (in each case whether a monotherapy or in the form of a Combination Product or for concomitant or sequential use with other therapeutics) to achieve the corresponding Regulatory Milestone Event, provided that for the second Product (containing the respective other Compound) to achieve the corresponding Regulatory Milestone Event, such Regulatory Milestone Payments shall be reduced by [*]

| # | Regulatory Milestone Event (per Product) | Regulatory Milestone Payment (in USD) |
|---|---|---|
| 1 | [*] | [*] |
| 2 | [*] | [*] |
| 3 | [*] | [*] |
| 4 | [*] | [*] |
| 5 | [*] | [*] |

Each of the foregoing Regulatory Milestone Payments in this Section 6.2(a) shall be payable a maximum of [*] per Compound regardless of the number of times the applicable Regulatory Milestone Event was achieved by a Product containing or comprising the respective Compound, and no Regulatory Milestone Payment shall be due hereunder for any subsequent or repeated achievement of such Regulatory Milestone Event by a Product containing or comprising such Compound. For the avoidance of doubt, the maximum amount payable by Company to MRKDG pursuant to this Section 6.2(a) [*] assuming in each case that each of the Regulatory milestone events in this Section 6.2(a) were achieved.

(b) Company shall pay to MRKDG the applicable non-refundable milestone payments set forth below (each, a "**Commercial Milestone Payment**") when cumulative Net Sales within the Territory for all Products reach each of the thresholds set forth below.

| Commercial Milestone Event | Commercial Milestone Payment (in USD) |
|---|---|
| [*] | [*] |
| [*] | [*] |
| [*] | [*] |
| [*] | [*] |

The achievement of a higher Commercial Milestone Event shall also trigger the payment of a lower Commercial Milestone Event in the event such lower Commercial Milestone Event had not been triggered prior to achievement of the higher Commercial Milestone Event. For clarity, in such case both the payment of lower milestone and the higher milestone shall be triggered. Each of the foregoing Commercial Milestone Payments in this Section 6.2(b) shall be payable a maximum of [*] as set forth in the foregoing chart regardless of the number of times the applicable Commercial Milestone Event was achieved, and no Commercial Milestone Payment shall be due hereunder for any subsequent or repeated achievement of such Commercial Milestone Event. For the avoidance of doubt, the maximum amount payable by Company to MRKDG pursuant to this Section 6.2(b) is [*] assuming that each of the milestone events in this Section 6.2(b) were achieved.

(c) Company shall notify MRKDG in writing [*] after a Regulatory Milestone Event or Commercial Milestone Event has occurred.

(d) Payment of any Regulatory Milestone Payment or Commercial Milestone Payment by Company to MRKDG shall be due within [*] upon receipt of a corresponding invoice from MRKDG for the applicable Milestone Payment notified by Company to MRKDG pursuant to Section 6.2(c).

**6.3 Royalty**.

(a) Royalty Rate. Effective commencing on the Effective Date, as further consideration for MRKDG's grant of the rights and licenses to Company hereunder, Company shall, during each applicable Royalty Term, pay to MRKDG a royalty [*].

[*].

(b) Royalties Generally. Nothing herein contained shall obligate Company or its Sublicensees to pay or cause to be paid to MRKDG more than one royalty on any unit of a Product.

(c) Royalty Term. Royalties shall be payable on a Product-by-Product and country-by-country basis from the date of First Commercial Sale of a Product in a country until the later of (i) the expiration of the last Valid Claim of a patent included in the MRKDG Technology that covers such Product in such country; and (ii) twelve (12) years after the First Commercial Sale of such Product in such country (the "**Royalty Term**").

(d) Royalty Deductions.

(i) No Valid Claim. In the event that a Product is not covered by a Valid Claim of a patent included in the MRKDG Technology in the US before the expiration of the twelve (12) years after the First Commercial Sale in such country, then the royalties on Net Sales of such Product in the US due under Section 6.3(a) shall be reduced by [*] until the expiration of the aforementioned twelve (12) years. In the event that a Product is not covered by a Valid Claim of a patent included in the MRKDG Technology, [*], before the expiration of the twelve (12) years after the First Commercial Sale in such country, then the royalties on Net Sales of such Product in such country due under Section 6.3(a) shall be reduced by [*] until the expiration of the aforementioned twelve (12) years. For purposes of this section, [*].

(ii) Generic Entry. If, after entry of one or more Generic Product(s) on a country-by-country basis, the annual volume of the Product sold by or on behalf of Company, decreases by [*], as compared to the average volume of Product sold on a country-by-country basis during the [*] prior to entry of the first Generic Product, then the royalty rate set forth in Section 6.3(a) will be reduced by [*] in such country. "**Generic Product**" means with respect to a Product, a Third Party product: (A)

with the same active ingredient(s); or (B) that has obtained Regulatory Approval from the applicable Regulatory Authority by means of a procedure for establishing equivalence to the Product or otherwise in reliance on data generated for the Product; and (C) is legally marketed in such country by or under the authority of an entity other than Company, its Affiliates or Sublicensees.

(iii) Compulsory Licenses. If Company or its Affiliates or Sublicensees is caused by a Governmental Body to grant a compulsory license to any Third Party with respect to a Product in a particular country or jurisdiction, then the royalty rates set forth in Section 6.3(a) on Net Sales in such country shall be reduced [*].

(iv) Overall Royalty Floor. Notwithstanding anything to the contrary in this Section 6.3(d), in no event shall the royalty amounts due to MRKDG in any country in any Calendar Quarter be reduced [*] of the Royalty Rate due under 6.3(a) by operation of any of the foregoing royalty reduction mechanisms, alone or combined.

(e) Payment of Royalties. [*], Company shall pay, or cause to be paid, to MRKDG at such place as MRKDG may from time to time designate in writing, all royalties earned pursuant to this Section 6.3 in the preceding Calendar Quarter. All such payments shall be made in USD.

(f) [*].

**6.4 Royalty Reports; Currency Conversion; Disputes Regarding Reports**.

(a) Commencing with the Calendar Quarter in which the First Commercial Sale of a Product is made by Company or its Affiliate or Sublicensee, Company shall submit to MRKDG with each royalty payment a detailed, written report detailing its computation of royalties due on Net Sales in each country during each Calendar Quarter within [*] after the end of each Calendar Quarter (and Company shall cause its Sublicensees to submit royalty reports containing the same level of detail), whereas the report shall indicate: [*].

(b) All payments to MRKDG hereunder shall be made by deposit of USD in the requisite amount to such bank account as MRKDG may from time to time designate by written notice to Company. If any amounts that are relevant to the determination of amounts to be paid under this Agreement or any calculations to be performed under this Agreement are denoted in a currency other than USD, such amounts will be converted to their USD equivalent using [*].

(c) In the event of a dispute regarding the royalty reports, the Parties shall work in good faith to resolve the dispute in good faith. If the Parties are unable to resolve the dispute within [*] following a Party's notification of dispute, the dispute shall be submitted for decision to a certified public accounting firm mutually selected by each Party's certified public accountants or to such other Third Party as the Parties shall mutually agree. The decision of such expert shall be final and the costs of such decision shall [*]. Not later than [*] after such decision and in accordance with such decision, Company shall make any additional payments to MRKDG. Any overpayment shall be credited against future amounts due by Company to MRKDG.

**6.5 Record Retention; Inspection**. Company shall keep, or cause its Affiliates and Sublicensee to keep, complete and accurate records in sufficient detail to enable Net Sales and royalties payable under Section 6.3 to be established for a period of [*] after the date that such royalties were payable. Such records shall be consistent with Company's normal accounting principles. At the request of MRKDG (but not more frequently than [*] an independent chartered or certified public accountant chosen by MRKDG but approved by Company (which approval shall not be unreasonably withheld or delayed) shall be allowed access during ordinary business hours to such records pertaining to the preceding [*] solely to verify the accuracy of any payments made to MRKDG under Section 6.3. The accountant shall not disclose to MRKDG any information other than that which should properly be contained in a report of matters relevant to Net Sales and royalty calculation and payment arising under Section 6.3. In the case of Sublicensees, Company shall make such Sublicensees' records available to MRKDG. Any inspection conducted under this Section 6.5 shall be [*].

**6.6 Withholding Tax**. Where any sum due to be paid to MRKDG hereunder is subject to any withholding or similar tax, Company will pay such withholding or similar tax to the appropriate Governmental Body and deduct the amount paid from the amount then due to MRKDG and within [*] transmit to MRKDG an official tax certificate or other evidence of such withholding sufficient to enable MRKDG to claim such payment of taxes. The Parties will cooperate with one another and use reasonable efforts to reduce or eliminate tax withholding or similar obligations in respect of royalties and other payments made by Company to MRKDG under this Agreement. MRKDG will provide Company any tax forms that may be reasonably necessary in order for Company not to withhold tax or to withhold tax at a reduced rate under an applicable bilateral income tax treaty. Each Party will provide the other with reasonable assistance to enable the recovery, as permitted by Applicable Laws, of withholding taxes or similar obligations resulting from payments made under this Agreement, such recovery to be for the benefit of the Party bearing such withholding tax. [*]

**6.7 VAT**. For VAT purposes invoiced amounts are net amounts. In case payments under this Agreement are subject to VAT in Germany, VAT shall be added to the net amounts and be paid by Company to MRKDG. MRKDG shall remit such VAT to the proper tax authorities and shall cooperate with Company in any way reasonably requested by Company, to obtain available reductions, credits, or refunds of any VAT amount attributable to services contemplated in this Agreement unless otherwise stated by local law. Company is entitled to receive a proper invoice where any value added tax amount is shown separately, if applicable. Notwithstanding the generality of the foregoing, it is the Parties understanding that the transactions under this Agreement are not subject to German VAT according to applicable VAT law.

**6.8 Late Payments**. All payments under this Agreement shall earn interest from the date due until paid at a per annum rate equal to [*]. Interest will be calculated [*].

## ARTICLE 7 IP OWNERSHIP, INVENTIONS AND PATENT PROSECUTION AND MAINTENANCE

**7.1 Intellectual Property Ownership**.

(a) Effective commencing on the Effective Date, subject to the licenses granted in this Agreement, and subject to the licenses granted under the Existing License, as between the Parties MRKDG shall retain all right, title, and interest in the MRKDG Technology.

(b) Subject to the licenses granted in this Agreement, as between the Parties Company shall retain all right, title and interest in any and all other Patent Rights, Know-How, and other intellectual property rights that are (i) in existence and owned or controlled by Company as of the Effective Date; or (ii) developed by, for, or on behalf of, Company after the Effective Date other than in course of performance of this Agreement.

(c) All right, title, and interest in any and all other Patent Rights, Know-How, and intellectual property rights that are developed in the course of the performance of this Agreement shall be owned (i) solely by MRKDG, if developed solely by employees, agents, or independent contractors of MRKDG; (ii) solely by Company, if developed solely by employees, agents, or independent contractors of Company; and (iii) jointly and equally by both Parties, if developed jointly by employees, agents, or independent contractors of both Parties. Determination of ‘joint’ or ‘sole’ inventorship will be made in accordance with US patent laws.

**7.2 Patent Prosecution and Maintenance of Company Patents**.

(a) Effective commencing on the Effective Date, Company shall have the right to file, prosecute, and maintain the Patent Rights owned by Company pursuant to Section 7.1 (such Patent Rights, the "**Company Patents**").

**7.3 Patent Prosecution and Maintenance of MRKDG Patents**.

(a) US Drug Product Listing. Company shall have the sole right to determine which of the MRKDG Patents, if any, shall be listed for inclusion in the Approved Drug Products with Therapeutic Equivalence Evaluations pursuant to 21 U.S.CFR § 355, or any successor law in the United States, together with any comparable laws or regulations in any other country in the Territory. The Parties shall cooperate with each other to the extent necessary to effectuate the intent of this Section 7.3(a), including, promptly upon the other Party's request, providing such Party with assistance necessary for such patent listing and signing all necessary documents.

(b) Responsibility and Costs. MRKDG shall have the first right, and the obligation, to file, prosecute, and maintain MRKDG Patents. [*]. MRKDG shall keep Company informed of the course of the filing and prosecution of MRKDG Patents or related proceedings (e.g. interferences, oppositions, re-examinations, reissues, revocations, or nullifications) in the Territory in a timely manner, and shall take into consideration and incorporate in good faith the advice and recommendations of Company in that respect. At MRKDG's request, Company will provide MRKDG with reasonable assistance in prosecuting MRKDG Patents to the extent possible.

(c) Election not to File and Prosecute MRKDG Patents. If MRKDG elects not to file, prosecute, or maintain a MRKDG Patent in a country or possession in the Territory, then it shall notify Company in writing at least [*] before any deadline applicable to the filing, prosecution, or maintenance of such MRKDG Patent, as the case may be, or any other date by which an action must be taken to establish or preserve such MRKDG Patent in such country or possession. In such case, by no later than [*] before any deadline applicable to the filing, prosecution, or maintenance of such MRKDG Patent, or any other date by which an action must be taken to establish or preserve such MRKDG Patent in such country or possession, Company shall have the right, but not the obligation, to pursue the filing or support the continued prosecution or maintenance of such MRKDG Patent. Company may deduct [*] of any such reasonable costs incurred by Company in taking such action(s) against any amounts owed to MRKDG under Article 6. If Company does elect to take such action in a country in the Territory, then it shall notify MRKDG of such election, and MRKDG shall reasonably cooperate with Company in this regard. [*]

(d) Patent Term Extension. Company shall be responsible for obtaining patent term extensions wherever available for MRKDG Patents, and for deciding which Patent Rights to extend in a country where only one patent can be extended for a given Product. MRKDG shall provide Company with all relevant information, documentation, and assistance in this respect. Any such assistance, supply of information, and consultation shall be provided promptly and in a manner that will ensure that all patent term extensions for a Product are obtained wherever legally permissible, and to the maximum extent available.

**7.4 Enforcement of Patent Rights**.

(a) Notice. If either Party believes that a MRKDG Patent is being infringed by a Third Party or if a Third Party claims that any MRKDG Patent is invalid or unenforceable, the Party possessing such knowledge or belief shall promptly notify the other Party and provide it with details of such infringement or claim that are known by such Party.

(b) Right to Bring an Action. Company shall have the first right, but not the obligation, to attempt to resolve such infringement or claim, including by filing an infringement suit, defending against such claim or taking other similar action (each, an "**Action**") and to compromise or settle such infringement or claim, at its own expense. Subject to the special circumstances of

Section 7.6 (ANDA Filing), if Company does not take steps to abate such infringement or does not intend to prosecute or defend an Action within [*] after receiving notice or otherwise becoming aware of such infringement or claim, Company shall promptly inform MRKDG and MRKDG then shall have the right, but not the obligation, to attempt to resolve such infringement or claim, including by filing an Action and to compromise or settle any such infringement or claim. The Party initiating such Action shall have the sole and exclusive right to select counsel for any suit initiated by it pursuant to this Section 7.4.

(c) Settlement. Neither Party shall settle or otherwise compromise any Action (i) by admitting that any MRKDG Patent is invalid or unenforceable, without MRKDG's prior written consent, and (ii) in a manner that imposes any liability or obligation on the other Party or any of its Affiliates, or materially affects the other Party's rights hereunder, without the other Party's prior written consent. The settlement will be treated in accordance with the Applicable Laws of the country to which the settlement relates.

(d) Reasonable Assistance. The Party not enforcing or defending MRKDG Patents shall provide reasonable assistance to the other Party, including joining such Action if required by law or otherwise necessary to maintain such Action, providing access to relevant documents and other evidence and making its employees available, [*].

(e) Distribution of Amounts Recovered. Any amounts recovered by the Party taking an Action pursuant to this Section 7.4 (a)-(e), whether by settlement or judgment, shall be allocated in the following order: (i) [*] (ii) [*], and (iii) the remaining amount of such recovery shall be allocated as follows: (i) [*] and (ii) [*].

(f) Company Patents. As between the Parties, Company will have the sole right (but not the obligation) to enforce and defend the Company Patents in the Territory, using counsel of its own choice, in its own name and under Company's sole direction and control.

**7.5 Third Party Actions Claiming Infringement**.

(a) Notice. If a Party becomes aware of any claim or action by a Third Party against either Party that claims that the Product, or its use, Development, manufacture or Commercialization infringes such Third Party's intellectual property rights (each, a "**Third Party Action**"), such Party shall promptly notify the other Party of all details regarding such claim or action that is reasonably available to such Party. Thereafter, the Parties shall promptly meet to consider the Third Party Claim and the appropriate course of action and may, if appropriate, enter into a further joint defense agreement with respect to the common interest privilege protecting communications regarding such Third Party Claim in a form reasonably acceptable to the Parties.

(b) Right to Defend. Subject to the respective indemnity obligations of the Parties set forth in Article 10 and subject to Section 7.4, and unless otherwise agreed in the joint defense agreement, each Party shall have the right, [*], but not the obligation, to defend a Third Party Action through counsel of its choosing. Each Party shall have an equal right to participate in any settlement discussions that are held with the Third Party asserting a Third Party Claim, provided that neither Party shall enter into any settlement of any Third Party Claim that materially adversely affects the other Party's rights or interests (including, with respect to MRKDG, that would admit the invalidity or unenforceability of, or otherwise impair, any rights and interests in MRKDG Patents, or with respect to Company, that would admit the invalidity or unenforceability of, or otherwise impair, any rights and interests in Company Patents) or imposes any obligation or liability on the other Party.

**7.6 Certification Under Drug Price Competition and Patent Restoration Act.** Each Party shall immediately give written notice to the other Party of any certification of which they become aware filed pursuant to 21 U.S. CFR § 355(b)(2)(A) (or any amendment or successor statute thereto) claiming that any MRKDG Patents covering a Compound or a Product, or the manufacture or use of

each of the foregoing, are invalid or unenforceable, or that infringement will not arise from the manufacture, use or sale of a product by a Third Party ("**ANDA Filing**"). In the event of an ANDA Filing, then: (i) the time period for giving notice set forth in Section 7.4(a) shall be [*], and (ii) the time period for bringing an Action set forth in Sections 7.4(b) shall [*], or such shorter time period as may be required in order to avoid a loss of rights under Applicable Laws.

## ARTICLE 8 CONFIDENTIALITY

**8.1 Confidentiality Obligations**. Each Party agrees that, for the Term and for [*] thereafter, such Party shall, and shall ensure that its officers, directors, consultants, equity-investors, employees, and agents and Sublicensees shall, keep completely confidential and not publish or otherwise disclose and not use for any purpose except as expressly permitted hereunder any Confidential Information disclosed to it by the other Party pursuant to this Agreement. The MRKDG Know-How shall be deemed the Confidential Information of both Parties. The foregoing obligations shall not apply to any Confidential Information disclosed by a Party hereunder to the extent that the receiving Party can demonstrate that such Confidential Information:

(a) was already known to the receiving Party or its Affiliates, other than under an obligation of confidentiality, at the time of disclosure;

(b) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the receiving Party;

(c) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the receiving Party in breach of this Agreement;

(d) was subsequently lawfully disclosed to the receiving Party or its Affiliates by a Third Party without an obligation of confidentiality other than in contravention of a confidentiality obligation of such Third Party to the disclosing Party; or

(e) was developed or discovered by employees or agents of the receiving Party or its Affiliates who had no access to the Confidential Information of the disclosing Party.

Notwithstanding the above obligations of confidentiality and non-use, a Party may disclose information to the extent that such disclosure is reasonably necessary in connection with:

(i) filing or prosecuting patent applications, subject to the terms of Section 7.2 or Section 7.3;

(ii) prosecuting or defending litigation as permitted herein;

(iii) with respect to Company, conducting pre-clinical studies or Clinical Trials and with respect to MRKDG, conducting the Existing Clinical Studies;

(iv) with respect to Company, seeking and obtaining Regulatory Approval of any Product; or

(v) complying with Applicable Laws, including securities law and the rules of any securities exchange or market on which a Party's securities are listed or traded.

In addition, in connection with any permitted filing by either Party of this Agreement with any Governmental Body, including the U.S. Securities and Exchange Commission, the filing Party shall endeavour to obtain confidential treatment of economic, trade secret information, and such other Confidential Information as may be requested by the other Party, and shall provide the other Party with

the proposed confidential treatment request with reasonable time for such other Party to provide comments, and shall include in such confidential treatment request all reasonable comments of the other Party. The disclosing Party shall, where reasonably practicable, give such advance notice to the other Party of such disclosure requirement as is reasonable under the circumstances and will use its reasonable efforts to cooperate with the other Party in order to secure confidential treatment of such Confidential Information required to be disclosed.

**8.2 Publications**. Company shall have the right to publicly present or publish information relating to the Compounds or Products, including all Know-How generated by or on behalf of Company hereunder (including from any Clinical Studies conducted by Company) with respect to any Product (each such proposed presentation or publication, a "**Company Publication**") in accordance with this Section 8.2. Company shall provide the MRKDG Alliance Manager with a copy of each proposed Company Publication at least [*] prior to the earlier of its presentation or intended submission for publication; provided that in the case of abstracts, this period shall be at least [*] (such applicable period, the "**Review Period**"). Company agrees that it will not submit or present any such Company Publication (i) until MRKDG has provided comments in writing or by e-mail or telefax during such Review Period on the material in such Company Publication or (ii) until the applicable Review Period has elapsed without comments from MRKDG, in which case Company may proceed and the Company Publication will be considered approved in its entirety. If Company receives comments from MRKDG during the applicable Review Period, it shall consider the comments of MRKDG in good faith, but will retain the sole authority to submit the manuscript for such Company Publication, provided that Company agrees to (A) delete any Confidential Information of MRKDG that MRKDG identifies for deletion in its comments (except for information has already been publicly disclosed either prior to the Effective Date or after the Effective Date through no fault of Company or otherwise not in violation of this Agreement), and (B) delay such Company Publication for a period of up to an additional [*] after the end of the applicable Review Period to enable MRKDG to draft and file Patent Rights with respect to any subject matter to be made public in such Company Publication and to which MRKDG has the applicable intellectual property rights to file such Patent Rights. MRKDG and MRKDG's licensees and contractors shall have the right to publish the results of the Existing Clinical Studies; *provided*, *however*, that MRKDG shall submit such publications to Company in advance and shall take into account, or use Commercially Reasonable Efforts to cause its licensee or contractor, as applicable, to take into account, comments made by Company. Subject to the foregoing, with respect to any MRKDG Know-How that is specific to a Compound or Product (to the extent such MRKDG Know-How has not been previously publicly presented or published either (i) prior to the Effective Date or (ii) after the Effective Date in compliance with this Agreement), except as required by Applicable Law, MRKDG shall not publicly present or publish such MRKDG Know-How unless such presentation or publication is approved by Company in writing, such approval not to be unreasonably withheld, conditioned or delayed.

**8.3 Press Releases and Disclosure**. Within [*] after the Effective Date, the Parties will issue press releases regarding the signing of this Agreement substantially in the form attached hereto as **Schedule 8.3** (whereby the date/time shall be aligned between the Parties and which press releases shall be subject to final review and approval by the Parties prior to issuance). Except (a) as set forth in the preceding sentence and (b) as required to comply with Applicable Law (including the rules and regulations promulgated by the United States Securities and Exchange Commission or any equivalent Governmental Body in any country in the Territory), neither Party will make any public announcement regarding this Agreement without the prior written approval of the other Party. Notwithstanding anything to the contrary in this Article 8, the contents of any press release, presentation or other publication that has been reviewed and approved by a reviewing Party in accordance with this Article 8 may be re-released by such reviewing Party or publishing Party without a requirement for re-approval.

## ARTICLE 9 REPRESENTATIONS, WARRANTIES AND COVENANTS

**9.1 MRKDG Representations and Warranties**.

(a) MRKDG represents and warrants to Company that:

(i) it has the full power, authority, and right to enter into this Agreement and to perform its obligations hereunder in accordance with the terms and conditions hereof, and all requisite corporate action has been taken to authorize its execution, delivery, and performance of this Agreement;

(ii) the execution, delivery, and performance of this Agreement by MRKDG does not breach, violate, contravene, or constitute a default under any contract, arrangement, or commitment to which MRKDG is a party or by which it is bound, or violate any statute, law, or regulation or any court or Governmental Body having jurisdiction over MRKDG;

(iii) all consents, approvals, and authorizations from all Governmental Bodies or other Third Parties required to be obtained by MRKDG in connection with the execution, delivery, and performance of this Agreement have been obtained;

(iv) **Schedule 1.63** is a true, correct, and complete list of all MRKDG Patents;

(v) subject to the licenses granted under the Existing License, it has all right, title, and interest in and to the MRKDG Technology, and neither MRKDG nor any MRKDG Affiliate has previously licensed, assigned, transferred, or otherwise conveyed any right, title, or interest in and to the MRKDG Technology to any Third Party with respect to the Indications in the Field in any manner that would interfere with the rights granted by MRKDG to Company hereunder;

(vi) MRKDG (and its Affiliates) does not own or Control (through license or otherwise) any (A) Patent Rights other than those Patent Rights included within the MRKDG Patents or (B) any Know-How other than the Know-How included within the MRKDG Know-How, in each case of (A) and (B), that is necessary to Develop, manufacture or Commercialize the Compounds or any Products (for clarity, in the form such Compounds or Products exist as of the Effective Date, as applicable);

(vii) To MRKDG's knowledge, (i) all MRKDG Patents are valid and enforceable Patent Rights (or in the case of patent applications, applied for), (ii) all MRKDG Patents are filed and maintained properly and correctly and all applicable fees have been paid on or before any final due date for payment, and (iii) MRKDG has complied in all material respects with all Applicable Law, including any duties of candor to applicable patent offices, in connection with the filing, prosecution and maintenance of the MRKDG Patents.

(viii) as of the Effective Date, the MRKDG Technology is free and clear of any liens, charges, encumbrances, or rights of others to possession or use. For the avoidance of doubt, this subsection (viii) is not a warranty of non-infringement or freedom-to-operate;

(ix) as of the Effective Date, no claims have been asserted, or, to MRKDG's knowledge, threatened by any Person, nor are there any valid grounds for any claim of any such kind (A) challenging the validity, effectiveness, or ownership of MRKDG Technology, or (B) to the effect that the use, reproduction, modification, manufacturing, distribution, licensing, sublicensing, sale, or any other exercise of rights in any of MRKDG Technology infringes or will infringe on any intellectual property right of any Person. No such claims have been asserted or, to the knowledge of MRKDG, are threatened;

(x) **Schedule 2.5** sets forth all of the INDs, NDAs and Marketing Approvals for the Compounds and Products, as applicable, as of the Effective Date in the name of, or otherwise held by or on behalf of, MRKDG or any of its Affiliates in the Territory;

(xi) Neither MRKDG nor any of its Affiliates (alone or with any Third Party) is conducting any clinical development of any Compound or Product except for the Existing Clinical Trials;

(xii) All research, Development (including non-clinical studies and Clinical Trials) and manufacturing activities with respect to the Compounds and Products conducted by or on behalf of MRKDG or any of its Affiliates prior to the Effective Date have been conducted in all material respects in accordance with all Applicable Laws and, to MRKDG's knowledge, MRKDG (and its Affiliates) has not employed or otherwise used in any capacity the services of any person or entity debarred under 21 U.S.C. § 335a (or foreign equivalent) in performing any such research, Development (including non-clinical studies and Clinical Trials) or manufacturing activities prior to the Effective Date, as applicable. Neither MRKDG nor any of its Affiliates, nor, to MRKDG's knowledge, any of its or their respective directors, officers or employees or any of its or its Affiliates' respective agents, have made a knowingly false or fraudulent statement to any Regulatory Authority with respect to the Development of the Compounds or Products, or knowingly failed to disclose a material fact required under Applicable Law to be disclosed to any Regulatory Authority with respect to the Development of the Compounds or any Product;

(xiii) No warning letters, clinical holds or similar written notices have been issued to MRKDG or its Affiliates with respect to any Product by any Regulatory Authority, and to MRKDG's knowledge no warning letters or similar written notices with respect to any Product is pending or threatened;

(xiv) No funding from any government funding source has been used in the Development or manufacture, in each case, by MRKDG (or any of its Affiliates), of the Compounds or Products. No Development or manufacture, in each case, by or on behalf of MRKDG (or any of its Affiliates), of the Product has been conducted under any government contract, and, to MRKDG's knowledge, no Know-How, Patent Rights or other intellectual property within the MRKDG Technology is a "subject invention" as defined under 48 CFR 27.301 (or foreign equivalent thereof); and

(xv) to the knowledge of MRKDG, all tangible information and data provided by or on behalf of MRKDG to Company on or before the Effective Date in contemplation of this Agreement was and is, as of the Effective Date, true and, accurate in all material respects; in addition, to the knowledge of MRKDG, MRKDG has not failed to disclose, or cause to be disclosed, any information or data that would cause the information and data that has been disclosed to be misleading in any material respect;

(xvi) all Compound Inventory delivered to Company hereunder was manufactured, stored and delivered in accordance with all Applicable Laws including cGMP applicable to the manufacturing site at the production date of such Compound Inventory, and the applicable specifications for such Compound or Product.

(b) **MRKDG DISCLAIMS ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WARRANTIES TO TITLE OR NON-INFRINGEMENT, TO FREEDOM TO OPERATE, OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OF COMPOUND/PRODUCT FOR A PARTICULAR PURPOSE.**

(c) **IN NO EVENT SHALL MRKDG BE LIABLE TOWARD COMPANY FOR ANY DAMAGES OR LOSSES BASED ON FACTS OR CIRCUMSTANCES OF WHICH COMPANY WAS ACTUALLY AWARE OF OR SHOULD HAVE BEEN AWARE OF AFTER DUE INQUIRY ON THE EFFECTIVE DATE**. In particular, MRKDG shall not be liable for any damages based on facts and circumstances that were disclosed to Company or its counsel, accountants, or other advisors with respect to the MRKDG Technology or a Product prior to the Effective Date, in particular [*]. The foregoing shall not be construed to limit MRKDG's liability with respect to representations and warranties given by MRKDG under Section 9.1(a).

**9.2 Representations and Warranties of Company**.

(a) Company represents and warrants to MRKDG that as of the Effective Date:

(i) it has the full power, authority, and right to enter into this Agreement and to perform its obligations hereunder in accordance with the terms and conditions hereof, and all requisite corporate action has been taken to authorize its execution, delivery, and performance of this Agreement;

(ii) the execution, delivery, and performance of this Agreement by Company does not breach, violate, contravene or constitute a default under any contract, arrangement, or commitment to which Company is a party or by which it is bound, or violate any statute, law, or regulation or any court or Governmental Body having jurisdiction over Company; and

(iii) all consents, approvals, and authorizations from all Governmental Bodies or other Third Parties required to be obtained by Company in connection with the execution, delivery, and performance of this Agreement have been obtained.

(b) Company further represents and warrants to MRKDG that:

(i) as of the Effective Date, all written declarations made by Company to MRKDG related to Company's qualifications, ability, and competence to Develop and Commercialize the Product in the Territory are materially true and correct;

(ii) as of the Effective Date and at any time during the Term, Company (A) shall have and maintain facilities, personnel, experience, and expertise sufficient in quality and quantity to perform its obligations hereunder, (B) shall perform its obligations hereunder with reasonable due care and in conformity with current generally accepted industry standards and procedures, (C) shall procure that its management establishes and maintains appropriate quality assurance, quality controls, and review procedures to secure good standard performance of its obligations hereunder, and (D) shall procure resources sufficient to service all sale channels for the sale of a Product which has obtained Marketing Authorization and is to be Commercialized in the Territory by Company;

(iii) as of the Effective Date and at any time during the Term, Company shall have implemented sufficient security systems and intellectual property protection guidelines within its organization which are equivalent to international industry standards and qualified to avoid any unauthorized disclosure of intellectual property rights, including Know-How, to any Third Party;

(iv) as of the Effective Date and at any time during the Term, Company will procure that all data related to human samples and other Personal Data obtained in course of the Research, Development, manufacturing or Commercialization of a Compound or a Product will be obtained, processed, and stored in compliance with all Applicable Laws, in particular with Data Protection Law, and in accordance with all medical, administrative, and ethical aspects related to the collection, procession and storage of human samples, related data, and other Personal Data in research activities – in particular, the signature of the informed consent from the donor will be obtained, the confidentiality, and anonymization of the human samples will be procured and the personnel involved in such activities will be authorized and will have the capacity to perform such activities, in each case in compliance with Applicable Laws; and

(v) as of the Effective Date and at any time during the Term, Company will comply with all Applicable Laws for the care, welfare, and ethical treatment of animals in the

country where the Research and Development is being performed. In order to ensure proper treatment and use of animals, Company will adhere at a minimum to (A) MRKDG's policy on the use, care and welfare of laboratory animals, (B) MRKDG Standard on "Housing and Husbandry Practices for Common Laboratory Animals," (C) the principle of "3Rs" – reduction, refinement, and replacement of animal studies; (D) the principle to offer state of the art housing and husbandry conditions in the care and use of animals which means access to species appropriate food and water; access to species specific housing, including species appropriate temperature and humidity levels; access to humane care and a program of veterinary care; animal housing that minimizes the development of abnormal behaviors; review of study design and purpose by institutional ethical review panel; commitment to minimizing pain and distress during the studies conducted under the research plan and work is performed by demonstrable trained staff.

**9.3 MRKDG Covenants**. MRKDG hereby covenants to Company that, during the Term,

(a) MRKDG will not grant to any Third Party the right to Research, Develop, or Commercialize the Compounds or Products in the Field with respect to any Indication; and

(b) MRKDG will not (and shall cause its Affiliates not to) (i) take any action that would cause a lien, charge or encumbrance on any MRKDG Technology or (ii) assign, transfer, convey or otherwise grant to any Person any rights to any MRKDG Technology (or any rights to any intellectual property that would otherwise be included in the MRKDG Technology but for such action resulting in the loss of Control of such intellectual property rights), in any manner that is inconsistent with the licenses or other rights granted to Company under this Agreement.

**9.4 Company Covenants**.

(a) Company hereby covenants to MRKDG that, during the Term:

(i) Company will, and will require its Affiliates and subcontractors to comply with all Applicable Laws in its and their Research and Development of Compounds and Products;

(ii) Company will only Research, Develop, or Commercialize the Compound or Product in the Field and with respect to the Indications;

(iii) Company will not, and will cause its Affiliates not to (A) sell, assign, or otherwise transfer to any Person any MRKDG Technology (or agree to do any of the foregoing) other than in connection with a Change of Control, in a manner that conflicts with the rights granted to Company hereunder, or (B) incur or permit to exist, with respect to any MRKDG Technology, any lien, encumbrance, charge, security interest, mortgage, liability, grant of license to Third Parties, or other restrictions which conflicts with the rights granted to Company hereunder;

(iv) Company will not engage directly or indirectly, in any capacity in connection with this Agreement any Person who either has been debarred by the FDA, is the subject of a conviction described in Section 306 of the FD&C Act or is subject to any similar sanction;

(v) Company will inform MRKDG promptly in writing if it or any Person engaged by Company or any of its Affiliates who is performing services under this Agreement or any ancillary agreements is debarred or is the subject of a conviction described in Section 306 of the FD&C Act, or if any action, suit, claim, investigation, or legal or administrative proceeding is pending or, to Company's knowledge, is threatened, relating to the debarment or conviction of Company, any of its Affiliates, or any such Person performing services hereunder or thereunder;

## ARTICLE 10 INDEMNIFICATION AND INSURANCE

**10.1 Indemnification by MRKDG**. MRKDG shall defend, indemnify, and hold harmless Company, its Affiliates, directors, employees, and agents (collectively, the "**Licensee Indemnitees**") from and against any and all liability, damage, loss, cost, or expense (including reasonable attorney's fees and expenses of litigation) (collectively, the "**Losses**") arising or resulting from any claims made or suits brought by Third Parties to the extent such Losses arise or result from (a) the breach of any MRKDG representations, warranties, or covenants hereunder; (b) the gross negligence or willful misconduct of any MRKDG Indemnitee in connection with this Agreement in connection with the performance of MRKDG's obligations or exercise of MRKDG's rights under this Agreement; and (c) the conduct of the Existing Clinical Trials, except to the extent such Losses arise from any claims for which Company is obligated to indemnify MRKDG Indemnitees in Section 10.2.

**10.2 Indemnification by Company**. Company shall defend, indemnify, and hold harmless MRKDG, its Affiliates, directors, employees, and agents (collectively, the "**MRKDG Indemnitees**") from and against any and all Losses arising or resulting from any claims made or suits brought by Third Parties to the extent such Losses arise or result from (a) the gross negligence or willful misconduct of Company or its Affiliates or its Sublicensees and its or their respective directors, officers, employees, and agents, in connection with the performance of Company's obligations or exercise of Company's rights under this Agreement; (b) a breach of any of Company representations, warranties, or covenants hereunder (c) the activities that are actually conducted by or on behalf of Company, its Affiliates, or its Sublicensees, in particular the handling and storage by or on behalf of Company, its Affiliates, or its Sublicensees of any chemical agents or other compounds for the purpose of conducting Research or Development by or on behalf of Company, its Affiliates, or its Sublicensees, including any product liability, personal injury, property damage, or other damage caused thereby; or (d) any infringement of Patent Rights of any Third Party by Company, its Affiliates, or its Sublicensees with respect to any Research, Development, or Commercialization on any Product anywhere in the world or with respect to any other activity performed under this Agreement, except to the extent such Losses arise from any claims for which MRKDG is obligated to indemnify Company Indemnitees in Section 10.1.

**10.3 Procedure**. A Party seeking indemnification under this Article 10 (the "Indemnified Party") shall give prompt written notification to the other Party (the "Indemnifying Party") of the claim for which indemnification may be sought (it being understood and agreed, however, that the failure by a Party to give notice of such claim as provided in this Section 10.3 shall not relieve the Indemnifying Party of its indemnification obligation under this Agreement except and only to the extent that such Indemnifying Party is actually prejudiced as a result of such failure to give notice). Within [*] after delivery of such notification, the Indemnifying Party may, upon written notice thereof to the other Party, assume control of the defense of such claim with counsel reasonably satisfactory to the Indemnified Party. If the Indemnifying Party does not assume control of such defense, the Indemnified Party shall control such defense and, without limiting the Indemnifying Party's indemnification obligations, the Indemnifying Party shall reimburse the Indemnified Party for all costs and expenses, including reasonable attorneys' fees and disbursements, incurred by the Indemnified Party in defending itself within [*] after receipt of any invoice therefor from the Indemnified Party. The Party not controlling such defense may participate therein at its own expense; *provided*, that if the Indemnifying Party assumes control of such defense and the Indemnified Party in good faith concludes, based on written advice from outside counsel, that the Indemnifying Party and the Indemnified Party have conflicting interests with respect to such claim sufficiently adverse to make unadvisable the representation by the same counsel of both Parties under Applicable Laws, ethical rules or equitable principles, the Indemnifying Party shall be responsible for the reasonable fees and expenses of a single counsel to the Indemnified Party in connection therewith. The Party controlling such defense shall keep the other Party advised of the status of such claim and the defense thereof and shall consider recommendations made by the other Party with respect thereto. The Indemnifying Party shall not agree to any settlement of such claim or consent to any judgment in respect thereof that does not include a complete and unconditional release of the Indemnified Party from all liability with respect thereto, that imposes any liability or obligation on the Indemnified Party or that acknowledges fault by the Indemnified Party, without the prior written consent of the Indemnified Party.

**10.4 Insurance**.

(a) Coverage. As of the Effective Date and at any time thereafter during the Term, each Party shall obtain and maintain [*], insurance [*]. It is understood and agreed that this insurance shall not be construed to limit either Party's liability with respect to its indemnification obligations hereunder. Each Party will, [*], provide to the other Party upon request, a certificate evidencing the insurance such Party is required to obtain and keep in force under this Section 10.4.

(b) Post-Termination Obligations. Company will maintain the insurance required under Section 10.4(a) beyond the expiration or termination of this Agreement for a reasonable period after the period during which Company or its Affiliates or Sublicensees were Developing or Commercializing the Compound or Product, which in no event will be less than [*].

(c) Affiliates, Sublicensees, and Distributors. Company will require all of its Affiliates, Sublicensees, and distributors to comply with the provisions and obligations under this Section 10.4 as if such entity were Company.

**10.5 Consequential Damages; Limitation of Liability**. EXCEPT FOR CLAIMS OF A THIRD PARTY THAT ARE SUBJECT TO INDEMNIFICATION UNDER THIS ARTICLE 10, NEITHER PARTY NOR ANY OF ITS AFFILIATES WILL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR OTHER INDIRECT DAMAGES OR LOST OR IMPUTED PROFITS OR ROYALTIES, LOST DATA, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER LIABILITY IS ASSERTED IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT PRODUCT LIABILITY), INDEMNITY, CONTRIBUTION, OR OTHERWISE ARISING OUT OF, OR RELATING TO, THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREIN OR ANY BREACH HEREOF, AND IRRESPECTIVE OF WHETHER THAT PARTY OR ANY REPRESENTATIVE OF THAT PARTY HAS BEEN ADVISED OF, OR OTHERWISE MIGHT HAVE ANTICIPATED THE POSSIBILITY OF, ANY SUCH LOSS OR DAMAGE. NOTHING IN THIS AGREEMENT SHALL LIMIT EITHER PARTY FROM SEEKING OR OBTAINING ANY REMEDY AVAILABLE UNDER LAW FOR ANY BREACH OF BY THE OTHER PARTY OF ITS CONFIDENTIALITY AND NON-USE OBLIGATIONS UNDER ARTICLE 8.

## ARTICLE 11 TERM AND TERMINATION

**11.1 Term of Agreement**. The term of this Agreement (the "**Term**") shall commence on the Effective Date and, unless earlier terminated as provided in this Article 11 or in Section 13.1, shall continue in full force and effect, (a) on a Product-by-Product and country-by-country basis, until the date on which the Royalty Term in such country with respect to such Product expires, or (b) in its entirety upon the expiration of all payment obligations under this Agreement with respect to all Products in all countries.

**11.2 Termination for Convenience by Company**. Company shall have the right to terminate this Agreement in its entirety or on a Compound-by-Compound basis at any time, for any or no reason, upon [*] advance written notice to MRKDG.

**11.3 Termination for Non-Payment**. If Company has not paid the upfront payment as provided for in Section 6.1 by the required respective payment date, MRKDG shall have the right to terminate this Agreement with immediate effect upon written notice to Company.

**11.4 Termination for Breach**.

(a) Either Party may terminate this Agreement with [*] prior notice to the other Party, if the other Party breaches any material provision of this Agreement, unless, in case that such material breach is curable by the breaching Party, the other Party cures such breach within [*] upon the date of such notice (provided that if such cure cannot be fully achieved within such [*] cure period and the breach relates Company's diligence obligation with regard to Development or Commercialization under this Agreement, then such cure period will be extended for an additional period of up to [*] (for a total cure period of [*]).

(b) In the event that Company breaches its diligence obligation with regard to the Development or Commercialization under this Agreement, MRKDG may, in its sole discretion, exercise its termination right pursuant to Section 11.4(a) either (i) in whole, (ii) with respect to one or more specific Products or Indications, or (iii) with respect to one or more specific countries in the Territory.

(c) Notwithstanding the foregoing, if the breaching Party in Section 11.4(a) disputes in good faith the existence, materiality, or failure to cure of any breach, and provides written notice to the non-breaching Party of such dispute within the relevant cure period, the non-breaching Party will not have the right to terminate this Agreement in accordance with Section 11.4(a), unless and until (i) the relevant dispute has been resolved in accordance with Section 13.17 and it has been finally determined that the allegedly breaching Party is in material breach of any of its obligations under this Agreement, and (ii) such Party has failed to cure the same (which cure period shall commence following such final determination). During the time such dispute is pending, all the terms of this Agreement will remain in effect and the Parties will continue to perform all of their respective obligations hereunder.

**11.5 Termination for Insolvency**.

(a) If either Party makes an assignment for the benefit of creditors, appoints or suffers appointment of a receiver or trustee over all or substantially all of its property, files a petition under any bankruptcy or insolvency act, or has any such petition filed against it that is not discharged within [*] after the filing thereof, the other Party may terminate this Agreement in its entirety by providing written notice of its intent to terminate this Agreement to the insolvent Party, in which case, this Agreement will terminate on the date on which the insolvent Party receives such written notice.

(b) Rights in Bankruptcy**.** For purposes of Section 365(n) of the US Bankruptcy Code (the "**Code**") and any similar Applicable Law in any other jurisdiction, all rights and licenses granted under or pursuant to this Agreement by a Party are, and shall otherwise be deemed to be, for purposes of the Code or any comparable provision of any Applicable Law in any other jurisdiction, rights to "intellectual property" (as defined in Section 101(35A) of the Code) or any comparable provision of any Applicable Law in any other jurisdiction. The Parties agree that each Party, as licensee of such rights under this Agreement, shall retain and may fully exercise all of its rights and elections under the Code or any comparable provision of any Applicable Law in any other jurisdiction. The Parties further agree that, in the event of the commencement of a bankruptcy proceeding by or against a Party under the Code or any comparable provision of any Applicable Law in any other jurisdiction, the other Party shall be entitled to a complete duplicate of (or complete access to, as appropriate) any such intellectual property and all embodiments of such intellectual property, which, if not already in such other Party's possession, shall be promptly delivered to such other Party (i) upon any such commencement of a bankruptcy proceeding upon such other Party's written request therefor, unless such Party elects to continue to perform all of its obligations under this Agreement, or (ii) if not delivered under clause (i), following the rejection of this Agreement by such Party upon written request therefor by such other Party. The Parties agree that they intend the following rights to extend to the maximum extent permitted by law, including for purposes of the Code or any comparable provision of any Applicable Law in any other jurisdiction: (a) the right of access to any intellectual property (including all embodiments thereof) of the licensor, or any Third Party with whom the licensor contracts

to perform an obligation of such licensor under this Agreement which is necessary for the Development, manufacture or Commercialization of the Product; (b) the right to contract directly with any Third Party described in (a) to complete the contracted work and (c) the right to cure any default under any such agreement with a Third Party and set off the costs thereof against amounts payable to such licensor under this Agreement. The provisions of this Section 11.5(b) shall be (i) without prejudice to any rights a Party may have arising under any applicable insolvency statute or other Applicable Law and (ii) effective only to the extent permitted by Applicable Law.

**11.6** No Challenge. In the event that Company or any of its Affiliates, anywhere in the world, institutes, prosecutes, or otherwise participates in (or in any way aids any Third Party in instituting, prosecuting or participating in), at law or in equity or before any administrative or regulatory body, including the U.S. Patent and Trademark Office or its foreign counterparts, any claim, demand, action, or cause of action for declaratory relief, damages, or any other remedy, or for an enjoinment, injunction, or any other equitable remedy, including any nullity suit interference, re-examination, opposition, or any similar proceeding, alleging that any claim in a MRKDG Patent is invalid, unenforceable, or otherwise not patentable, MRKDG shall have the right to terminate with immediate effect the license granted to Company under such challenged MRKDG Patent, upon [*] prior written notice to Company, unless Company (or its Affiliate) or such Third Party challenges any MRKDG Patent in defense of claims raised by or on behalf of MRKDG (or its Affiliate) against Company (or its Affiliate) or such Third Party. In the event that MRKDG notifies Company in writing that any Sublicensee (or its Affiliate), anywhere in the world, institutes, prosecutes, or otherwise participates in (or in any way aids any Third Party in instituting, prosecuting or participating in), at law or in equity or before any administrative or regulatory body, including the U.S. Patent and Trademark Office or its foreign counterparts, any claim, demand, action, or cause of action for declaratory relief, damages, or any other remedy, or for an enjoinment, injunction, or any other equitable remedy, including any nullity suit interference, re-examination, opposition, or any similar proceeding, alleging that any claim in a MRKDG Patent is invalid, unenforceable, or otherwise not patentable, then Company shall terminate such Sublicensee's sublicense in its entirety, unless such Sublicensee (or its Affiliate) or such Third Party challenges any MRKDG Patent in defense of claims raised by or on behalf of MRKDG (or its Affiliate) against such Sublicensee (or its Affiliate) or such Third Party.

**11.7 Competing Product Acquisition**. If Company (or one of its Affiliates or its successor in interest) acquires a Competing Product from a Third Party ("**Acquired COC Program**"), or undergoes a Change of Control which results in Company being controlled by an entity with a Competing Product that (i) [*] or (ii) [*] ("**Acquiring Person COC Program**"), then Company shall deliver to MRKDG as soon as possible (and in any event within [*] after Company acquires such Acquired COC Program or undergoes such Change of Control) a written notification of Company's election, in its sole discretion, either to divest or retain all of its rights, title and interest in and to such Acquired Competing Product or Acquiring Person COC Program. [*] If Company (or its successor in interest) provides notice of its intention to divest the Acquired Competing Product or Acquiring Person COC Program and fails to complete such divestiture within [*] after its acquisition thereof, then Company will be in material breach of this Agreement as of the expiration of such [*] period, and notwithstanding anything to the contrary in Section 11.4, such breach shall not be capable of being cured.

**11.8 Effects of Termination or Expiration**.

(a) Accrued Rights and Obligations. Termination or expiration of this Agreement shall not release either Party from its obligations accrued prior to the effective date of termination or expiration nor deprive either Party from any rights that this Agreement has conferred on such Party. Such obligations and rights shall survive termination or expiration of this Agreement. Termination of this Agreement by either Party shall be in addition to and not in lieu of any other remedies available to such Party, at law and in equity.

(b) Surviving Terms. Notwithstanding anything in this Agreement to the contrary, the following provisions shall expressly survive any expiration or termination of this Agreement in accordance with their terms: Article 1 (*Definitions*), Article 8 (*Confidentiality Obligations*), Article 10 (*Indemnification and Insurance*), Article 13 (*Miscellaneous*) and Sections 6.2 (*Milestone Payments* (to the extent sales milestone payment obligations have accrued prior to expiration of the Royalty Term)), 7.1 (*Intellectual Property Ownership*), 11.8 (*Effects of Termination or Expiration*) and 12.2 (*Data Privacy Audits*).

(c) Ordinary Expiry. Solely if this Agreement expires pursuant to Section 11.1, as of the effective date of the expiration of the Royalty Term with respect to a given Product and country, the license by MRKDG to Company under Section 2.1 shall convert to a fully paid, royalty free, irrevocable, perpetual, and non-exclusive license under the MRKDG Technology to Research, Develop, make, have made, use, import, export, keep, and Commercialize such Product in the Field in such country.

(d) Consequences of Termination by Company pursuant to Sections 11.2 or 11.4 or by MRKDG pursuant to Sections 11.3, 11.4, 11.5, 11.6, or 11.7. Upon any termination of this Agreement by Company pursuant to Sections 11.2 or 11.4 or by MRKDG pursuant to Sections 11.4, 11.5, 11.6, or 11.7 in whole:

(i) all licenses granted by MRKDG to Company under Section 2.1 shall terminate, and all licenses granted by Company to MRKDG under Section 2.3 shall terminate;

(ii) each Party shall return to the other (or at such other Party's request, destroy) all relevant records and materials in its possession or control containing or comprising the other Party's Confidential Information, provided that for purpose of this Section 11.8(d)(ii), the MRKDG Know-How shall be deemed Confidential Information of MRKDG only, and provided further, that the receiving Party may retain one copy of such Confidential Information for its archives solely to monitor compliance with its obligations herein, and provided further, that the receiving Party shall not be required to destroy electronic files containing such Confidential Information that are made in the ordinary course of its business information back-up procedures pursuant to its electronic record retention and destruction practices that apply to its own general electronic files and information; and

(iii) Company, its Affiliates, or its Sublicensees shall cease all Commercialization of Products in the Territory in a prompt manner and in accordance with Applicable Laws; *provided*, *however*, that Company, its Affiliates, or its Sublicensee shall be entitled, during the [*] period following such termination, to sell any commercial inventory of Products which remains on hand as of the date of the termination, so long as Company pays to MRKDG the royalties and, if applicable, and sales milestones applicable to said subsequent sales in accordance with the terms and conditions set forth in this Agreement. Any commercial inventory remaining following such [*] period shall be offered for sale to MRKDG, at a price equal to be mutually agreed upon between the Parties in good faith.

(e) Consequences of Termination in Part. Upon any termination of this Agreement by MRKDG pursuant to Section 11.4 or 11.6 not in whole, but in part with view to one or more Products or Indications or one or more countries of the Territory, Section 11.8(d) shall apply accordingly, but solely with view to the terminated Product or Indication or, as the case may be, the terminated countries in the Territory.

(f) Right to Maintain License. Notwithstanding the foregoing, if Company would have the right to terminate this Agreement pursuant to Section 11.4 due to MRKDG's breach of its representations and warranties [*], in lieu of such termination Company may elect to continue this Agreement in full force and effect (in which case Section 11.8(d) would not apply), except that [*]. For clarity, Company's election of the remedies set forth in this Section 11.8(f) shall be without prejudice to any other remedies that Company may have under this Agreement or otherwise under law.

(g) Reversion and Reverse Royalty. Solely in the event Company terminates this Agreement pursuant to Section 11.2 or MRKDG terminates this Agreement pursuant to Section 11.4, then on a Product-by-Product basis and with respect to the appliable terminated countries or Indications (each a "**Terminated Product**"), upon MRKDG's written request within [*] of the effective date of such termination, Company agrees to negotiate with MRKDG in good faith, an agreement on commercially reasonable terms whereby Company would grant MRKDG a license under Know-How and Patents Controlled by Company related directly to such Terminated Product to research, Develop, make, manufacture, have made, distribute, use, promote, market, sell, offer for sale, have sold, export, import, and otherwise Commercialize such Terminated Product.

(h) Sublicensees. At each Sublicensee's request, upon any termination of this Agreement, a Sublicensee shall continue to have the rights and license set forth in its sublicense agreement, which agreements shall be automatically assigned to MRKDG; *provided, however*, that such Sublicensee is not then in breach of any of its material obligations under its sublicense agreement; and, *provided further*, that the terms of the sublicense are at least as favorable to MRKDG as the ones herein.

(i) Other Remedies. Termination of this Agreement for any reason shall not release either Party from any liability or obligation that already has accrued prior to such termination. Termination of this Agreement for any reason shall not constitute a waiver or release of, or otherwise be deemed to prejudice or adversely affect or limit, any rights or remedies that otherwise may be available at law or in equity.

## ARTICLE 12 DATA PRIVACY

**12.1 Compliance with Data Protection Laws**.

(a) General Compliance.

(i) The Parties acknowledge that the Regulation (EU) 2016/679 ("**EU GDPR**") will be or can become applicable to the processing of Personal Data in connection with this Agreement and agree to process any Personal Data in accordance with Applicable Laws. Any Personal Data that(A) either Party received from the other Party, and/or (B) is processed by a Party as part of its obligations under this Agreement shall be processed by that Party only in strict compliance with Applicable Laws and exclusively for the purposes of this Agreement. Each Party shall ensure that all Persons entrusted with the processing of Persona Data are under the same obligation.

(ii) Each Party will treat the Personal Data that is processed in the performance of its obligations in strict confidence and will only store such Personal Data for as long as it is necessary in connection with this Agreement or otherwise required by Applicable Laws.

(b) Exchange of Personal Data Between the Parties.

(i) The Parties acknowledge and agree that where they process Personal Data for the purposes of this Agreement, to the extent relevant under the EU GDPR, each Party will act as an independent controller and will be solely responsible for its own processing activities.

(ii) If and to the extent Personal Data is processed by or on behalf of MRKDG by Company, or by or on behalf of Company by MRKDG, so that Company or MRKDG, as the case may be, is acting as a "processor" according to the EU GDPR, a processing agreement shall be agreed in writing by the Parties in order to comply with the requirements under the EU GDPR.

(iii) If and to the extent that the Parties jointly determine the purposes and means of processing of Personal Data, acting as "Joint Controllers" according to the EU GDPR, the Parties shall agree in writing on a Joint Controller agreement that determines their respective responsibilities for compliance with the EU GDPR and that shall apply in addition to the other provisions of this Clause.

(c) Cross-Border Transfer. Any transfer of Personal Data that originates in the European Union to a third country outside the European Union in connection with the performance of a Party's obligations under this Agreement shall only be made in accordance with Articles 44 to 50 of the EU GDPR and other Applicable Laws. The Parties agree to implement appropriate safeguards in accordance with Article 46 of the EU GDPR where necessary for the transfer of Personal Data for the purposes of the collaboration under this Agreement; this includes the obligation to enter into standard data protection clauses adopted by the European Commission in accordance with the examination procedure referred to in Article 93 (2) of the EU GDPR where necessary.

(d) Data Processing. As at the Effective Date, it is the Parties' mutual understanding that neither Party will act as Personal Data processor. Should the Processing (as such term is used in the EU GDPR) of Personal Data occur, the following shall apply:

(i) Where one Party consents to subcontracting by the other Party and if the Third Party contractor has access to Personal Data that is subject to this Agreement, the engaging Party shall appoint the Third Party contractor as a data processor under a contract which shall comply with the EU GDPR and shall ensure that the Third Party contractor complies with the engaging Party's obligations under this Clause, including, without limitation, entering into EU standard contractual clauses (if and to the extent required).

(ii) Where a Party is performing services under this Agreement as Processor (as such term is used in the EU GDPR), such Party shall promptly notify the other Party in writing after becoming aware of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data subject to this Agreement (the "Data Breach"). Either Party may then request from the other Party further reasonable information about the Data Breach, including a reasonably detailed description of the Data Breach and the categories of Personal Data affected by the Data Breach, and will work together to identify a root cause of, and to remediate such Data Breach. In furtherance of the foregoing, where (a) MRKDG becomes aware of a Data Breach, MRKDG will send an email to [*].notifying Company without undue delay, and (b) where Company becomes aware of a Data Breach, Company will send an email to [*] notifying MRKDG without undue delay.

**12.2 Data Privacy Audits**. Each Party shall have the right during the Term, and for a period of [*] following termination of this Agreement, to conduct an investigation and audit of the other Party's activities, books and records, to the extent they relate to that other Party's performance under this Agreement, to verify compliance with the terms of this Article 12; *provided, however*, that such books and records may not be audited more than once per Calendar Year and that such investigation or audit shall be conducted during normal business hours, upon reasonable prior notice and performed at the sole and exclusive expense of the auditing Party. The other Party shall cooperate fully with such investigation or audit, the scope, method, nature and duration of which shall be at the sole reasonable discretion of the auditing Party.

## ARTICLE 13 MISCELLANEOUS

**13.1 Compliance**. MRKDG intends to conduct its business in accordance with environmental, labor and social standards and to abide by the standards set forth in the MRKDG Code of Conduct and the MRKDG Human Rights Charter (available at http://www.merckgroup.com). Company shall comply, and shall ensure that its Affiliates, Sublicensees, or subcontractors comply, in all material respects with reasonably comparable environmental, labor, and social standards. Each Party

further acknowledges and ensures that it and its Affiliates, sublicensees, or subcontractors are familiar with the provisions of the United States Foreign Corrupt Practices Act, the UK Bribery Act, and applicable local bribery and corruption laws, and shall not take or permit any action that will either constitute a violation under, or cause the other Party to be in violation of, the provisions of the United States Foreign Corrupt Practices Act, the UK Bribery Act, or other equivalent or applicable local bribery and corruption law (collectively, "**Improper Conduct**"). In addition to any other rights a Party may have under this Agreement, if a Party notifies the other Party of, or if the other Party otherwise has a reasonable suspicion of, the occurrence of Improper Conduct, the Party may inspect or have inspected by an independent auditor the premises, books, and records of the other Party relevant to Improper Conduct for the purpose of ensuring compliance with its obligations under the preceding sentence. Should a Party gain sufficient evidence that the other Party or its Affiliates, sublicensees, or subcontractors have committed or engaged in any Improper Conduct, such Party may terminate this Agreement immediately by written notice to other Party.

**13.2 Relationship of the Parties**. Nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, joint venture, or employer-employee relationship between the Parties.

**13.3 Assignment**. This Agreement will not be assignable by any Party to any Third Party without the prior written consent of the non-assigning Party, except in the case of a Change of Control. Notwithstanding the foregoing, either Party may assign this Agreement or its rights and obligations under this Agreement, without the written consent of the other Party, to an Affiliate; *provided*, that as a condition of such assignment, the assignee shall agree to be bound by all obligations of the assigning Party hereunder. This Agreement will be binding upon the successors and permitted assigns of the Parties and the name of a Party appearing herein will be deemed to include the names of such Party's successors and permitted assigns to the extent necessary to carry out the intent of this Agreement. Any assignment not in accordance with this Section 13.3 will be void.

**13.4 Change of Control**. In the event of a Change of Control in Company, Company shall notify MRKDG within [*] after a Change of Control has occurred, or as soon as legally permissible.

**13.5 Performance and Exercise by Affiliates and Subcontractor**. Each Party shall have the right to have any of its obligations hereunder performed, or its rights hereunder exercised, by, any of its Affiliates or subcontractors and the performance of such obligations by any such Affiliate or subcontractor shall be deemed to be performance by such Party; *provided*, however, that such Party shall be responsible for ensuring the performance of its obligations under this Agreement and that any failure of any Affiliate or subcontractor performing obligations of such Party hereunder shall be deemed to be a failure by such Party to perform such obligations. For clarity, the foregoing means that each Party may designate an Affiliate or subcontractor to perform its obligations hereunder or to be the recipient of the other Party's performance obligations hereunder.

**13.6 Further Actions**. Each Party agrees to execute, acknowledge, and deliver such further instruments and to do all such other acts as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

**13.7 Accounting Procedures**. Each Party shall calculate all amounts, and perform other accounting procedures required, under this Agreement and applicable to it in accordance with (a) United States generally accepted accounting principles (US GAAP) or (b) IFRS, depending on which accounting standard is normally applied by such Party with respect to the filing of its reporting.

**13.8 Force Majeure**. Neither Party shall be liable to the other for failure or delay in the performance of any of its obligations under this Agreement for the time and to the extent such failure or delay is caused by acts of God, earthquake, riot, civil commotion, terrorism, war, strikes, or other labour disputes, fire, flood, failure or delay of transportation, default by suppliers or unavailability of raw materials, governmental acts or restrictions, or any other reason which is beyond the control of the respective Party. The Party affected by force majeure shall provide the other Party with full particulars thereof as soon as it becomes aware of the same (including its best estimate of the likely extent and duration of the interference with its activities), and will use Commercially Reasonable Efforts to overcome the difficulties created thereby and to resume performance of its obligations hereunder as soon as practicable.

**13.9 Representation by Legal Counsel**. Each Party hereto represents that it has been represented by legal counsel in connection with this Agreement and acknowledges that it has participated in the drafting hereof. In interpreting and applying the terms and provisions of this Agreement, no presumption will exist or be implied against the Party that drafted such terms and provisions.

**13.10 No Implied License; No Trademark Rights**. Except as set forth herein, no right or license is granted to Company hereunder by implication, estoppel, or otherwise to any Know-How, patent, or other intellectual property right Controlled by MRKDG or its Affiliates. No right, express or implied, is granted by this Agreement to a Party to use in any manner the name or any other trade name or trademark of the other Party in connection with the performance of this Agreement or otherwise.

**13.11 Entire Agreement; Amendments**. This Agreement constitutes and contains the entire understanding and agreement of the Parties respecting the subject matter hereof and cancel and supersede any and all prior negotiations, correspondence, understandings, and agreements between the Parties, whether oral or written, regarding such subject matter. No waiver, modification, or amendment of any provision of this Agreement shall be valid or effective unless made in a writing referencing this Agreement and signed by a duly authorized officer of each Party.

**13.12 Notices and Deliveries**. Any notice, request, approval, or consent required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given if delivered in person, transmitted by facsimile or email (receipt verified) or by express courier service (signature required) to the Party to which it is directed at its address or facsimile number or email shown below or such other address or facsimile number or email as such Party shall have last given by notice to the other Party.

If to MRKDG, addressed to:

Merck KGaA
Frankfurter Straße 250
64293 Darmstadt
Germany
[*]

with a copy, which shall not constitute notice, to:

Merck KGaA
Frankfurter Straße 250
64293 Darmstadt
Germany
[*]

If to Company, addressed to:

Day One Biopharmaceuticals, Inc.
395 Oyster Point Boulevard, Suite 217
San Francisco, CA 94080, USA
[*]

with a copy, which shall not constitute notice, to:

Fenwick & West
801 California Street
Mountain View, CA 94041 USA
[*]

**13.13 Language**. This Agreement shall be written and executed in, and all other communications under or in connection with this Agreement shall be in, the English language. Any translation into any other language shall not be an official version thereof, and in the event of any conflict in interpretation between the English version and such translation, the English version shall control.

**13.14 Waiver**. A waiver by either Party of any of the terms and conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of any such term or condition for the future, or of any other term or condition hereof. All rights, remedies, undertakings, obligations, and agreements contained in this Agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, obligation, or agreement of either Party.

**13.15 Severability**. If any clause or portion thereof in this Agreement is for any reason held to be invalid, illegal, or unenforceable, the same will not affect any other portion of this Agreement, as it is the intent of the Parties that this Agreement will be construed in such fashion as to maintain its existence, validity, and enforceability to the greatest extent possible. In any such event, this Agreement will be construed as if such clause of portion thereof had never been contained in this Agreement, and there will be deemed substituted therefor such provision as will most nearly carry out the intent of the Parties as expressed in this Agreement to the fullest extent permitted by Applicable Law.

**13.16 Governing Law**. This Agreement and all disputes arising out, of or in connection with, it, including its validity and/or termination, shall be governed by and construed in accordance with the laws [*], without giving effect to any choice of law principles that would require application of the laws of a jurisdiction outside of [*]. The Parties expressly agree that the application of the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded and shall not apply to this Agreement.

**13.17 Dispute Resolution.**

(a) General Dispute Resolution Procedure; Venue.

(i) The Parties shall negotiate in good faith and use reasonable efforts to settle any dispute, controversy, or claim arising from, or related to, this Agreement or the breach hereof, including its formation, its validity, its interpretation, the enforcement of contractual rights, or obligations and/or termination (each, a "**Legal Dispute**").

(ii) If a Legal Dispute cannot be resolved within [*], any Legal Dispute hereunder shall first be presented to the Party's Alliance Managers for resolution. A Legal Dispute shall be referred to such Alliance Managers upon either Party providing the other Party with written notice of such referral, and such Alliance Managers shall thereafter attempt to resolve such Legal Dispute through good faith discussions.

(iii) If a Legal Dispute cannot be resolved by the Alliance Managers within [*], the Legal Dispute shall then be presented to the Party's Senior Officers for resolution. A Legal Dispute shall be referred to such Senior Officers upon either Party providing the other Party with written notice of such referral, and such Senior Officers shall thereafter attempt to resolve such Legal Dispute through good faith discussions.

(iv) If a Legal Dispute is not resolved by the Parties' Senior Officers [*] of such other Party's receipt of such written notice, the Legal Dispute may be submitted to the courts of competent jurisdiction in [*].

(b) Injunctive Relief. Nothing contained in this Section 13.17 shall deny either Party the right to seek injunctive or other equitable relief from a court of competent jurisdiction in the context of a bona fide emergency or prospective irreparable harm, and such an action may be filed or maintained notwithstanding any ongoing discussions between the Parties.

**13.18 Counterparts**. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which together will be deemed to be one and the same instrument. A facsimile or a portable document format (PDF) copy of this Agreement, including the signature pages with signatures (in form of handwritten, non-certified electronic or certified electronic signatures), will be deemed an original.

**13.19 Headings; Construction; Interpretation**. Headings used herein are for convenience only and shall not in any way affect the construction of or be taken into consideration in interpreting this Agreement. The terms of this Agreement represent the results of negotiations between the Parties and their representatives, each of which has been represented by counsel of its own choosing, and neither of which has acted under duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms of this Agreement shall be interpreted and construed in accordance with the definitions for such terms provided herein or, if no such definitions are provided, with their usual and customary meanings, and each of the Parties hereto hereby waives the application in connection with the interpretation and construction of this Agreement of any rule of Applicable Laws to the effect that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party whose attorney prepared the executed draft or any earlier draft of this Agreement. Any reference in this Agreement to an Article, Section, subsection, paragraph, clause, Schedule, or Exhibit shall be deemed to be a reference to any Article, Section, subsection, paragraph, clause, Schedule, or Exhibit, of or to, as the case may be, this Agreement. All Schedules and Exhibits to this Agreement shall form an integral part of this Agreement. Except where the context otherwise requires, (a) any definition of or reference to any agreement, instrument or other document refers to such agreement, instrument other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications set forth herein or therein), (b) any reference to any Applicable Laws refers to such Applicable Laws as from time to time enacted, repealed or amended, (c) the words "herein," "hereof," and "hereunder," and words of similar import, refer to this Agreement in its entirety and not to any particular provision hereof, (d) the words "include," "includes," and "including" shall be deemed to be followed by the phrase "but not limited to," "without limitation," or words of similar import, (e) the word "or" is used in the inclusive sense (and/or), unless otherwise indicated by the term "either/or," and (f) the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

[**Signature Page follows**]

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed and delivered in duplicate by their duly authorized representatives with legal and binding effect as of the Effective Date.

**DAY ONE BIOPHARMACEUTICALS, INC.**

By: /s/ Jeremy Bender

Name: Jeremy Bender

Title: CEO

**MERCK KGAA**

By: /s/ Matthias Muellenbeck

Name: Matthias Muellenbeck

Title: SVP, Head Global Business Development & Alliance Management

By: /s/ Joern-Peter Halle

Name: Joern-Peter Halle

Title: Global Head of Research

**SCHEDULE 1.26**

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**Existing Clinical Studies**

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# SHARE EXCHANGE AGREEMENT

This Share Exchange Agreement (this "***Agreement***") is made and entered into as of May 4, 2021 (the "***Agreement Date***"), by and among (a) Day One Biopharmaceuticals Holding Company, LLC, a Delaware limited liability company (the "***Company***"), (b) DOT-1 Therapeutics, Inc., a Delaware corporation ("***Subsidiary***") and (c) Millennium Pharmaceuticals, Inc. (the "***Stockholder***").

## RECITALS

WHEREAS, the Stockholder is the owner of 9,857,143 shares of Subsidiary's Series A Preferred Stock, $0.0001 par value per share (referred to hereinafter as the "***Series A Preferred***" or the "***Exchange Shares***").

WHEREAS, in connection with its initial public offering (the "***IPO***"), the Company expects to be converted into a Delaware corporation expected to be called Day One Biopharmaceuticals, Inc. (the "***Successor***") pursuant to Section 18-216 of the Delaware Limited Liability Company Act (as amended, the "***LLC Act***") and Section 265 of the Delaware General Corporation Law (as amended, the "***DGCL***") (the "***Conversion***").

WHEREAS, in connection with the Conversion and the consummation of the IPO, all outstanding Preferred Units and Common Units in the Company will be converted into Common Stock of Successor.

WHEREAS, the parties desire that the Successor acquire the Exchange Shares from the Stockholder on the terms and subject to the conditions set forth herein in exchange for the issuance of 2,782,960 shares of the Successor's Common Stock (subject to proportional adjustment in the event of any stock split, stock dividend, or other similar event occurring in respect of the Company's Common Units or Successor's Common Stock, as applicable prior to the Conversion) (the "***Replacement Shares***" and such exchange of the Replacement Shares for the Exchange Shares, the "***Share Exchange***").

WHEREAS, the Company and Stockholder are the only two stockholders of Subsidiary as of the date hereof.

WHEREAS, as a result of the Share Exchange, Subsidiary will become a wholly-owned subsidiary of the Successor.

WHEREAS, the Share Exchange, together with the Conversion, is intended to qualify as a nontaxable transaction under Section 351 of the Internal Revenue Code of 1986, as amended.

WHEREAS, in connection with Subsidiary's prior financing activities, the Subsidiary, the Company and the Stockholder entered into that certain Investors' Rights Agreement, dated December 16, 2019 (the "***Investors Rights Agreement***"), that certain Right of First Refusal and Co-sale Agreement, dated December 16, 2019 (the ***"Co-Sale Agreement***"), and that certain Voting Agreement, dated December 16, 2019 (the "***Voting Agreement***," and together with the Rights Agreement and the Co-Sale Agreement, the "***Subsidiary Financing Documents***").

WHEREAS, the Voting Agreement may be amended, modified or terminated only by a written instrument executed by Subsidiary and the holders of a majority of the shares of Subsidiary Common Stock issued or issuable upon conversion of the shares of Subsidiary Preferred Stock held by the Investors (as defined in the Voting Agreement) (the "***Voting Agreement Requisite Majority***").

WHEREAS, the Investors Rights Agreement may be amended, modified or terminated only with the written consent of Subsidiary and the holders of a majority of the shares of Registrable Securities (as defined in the Rights Agreement) then outstanding; provided, however, that the amendment, modification or termination of certain provisions thereof additionally requires the consent of Stockholder (the "***Rights Agreement Requisite Majority***").

WHEREAS, the Co-Sale Agreement may be amended, modified or terminated only by a written instrument executed by Subsidiary and the holders of a majority of the shares of Subsidiary Common Stock issued or issuable upon conversion of the then outstanding shares of Subsidiary Preferred Stock held by the Investors (as defined in the Co-Sale Agreement) (the "***Co-Sale Agreement Requisite Majority***", and together with the Voting Agreement Requisite Majority and the Rights Agreement Requisite Majority, the "***Subsidiary Requisite Majority***").

WHEREAS, concurrently with the Exchange, the Company and the Stockholder, constituting the Subsidiary Requisite Majority, and Subsidiary wish to terminate the Subsidiary Financing Documents in their entirety.

WHEREAS, concurrently herewith the parties are entering into a letter agreement regarding that certain Asset Transfer and License Agreement entered into between Company and Stockholder dated December 16, 2019 (the "***ATLA***").

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and adequacy of which the parties acknowledge, the parties, including the Subsidiary Requisite Majority, hereby agree as follows:

**1. AGREEMENT TO EXCHANGE STOCK**.

**1.1. Authorization**. As of the Closing (as defined below), Successor shall have authorized the issuance to the Stockholder, pursuant to the terms and conditions of this Agreement, of the full number of Replacement Shares that are to be issued to the Stockholder hereunder. By executing this Agreement, as of the Closing (as defined below), the Company, Subsidiary and the Stockholder each hereby consent to, or otherwise waive any applicable transfer restrictions in respect of, the transfer of the Exchange Shares from the Stockholder to the Successor in accordance with the Subsidiary Financing Documents, Subsidiary's Certificate of Incorporation and Bylaws.

**1.2. Agreement to Exchange; Full Satisfaction**. On the terms and subject to the conditions set forth herein, at the Closing, the Stockholder shall, and hereby does, transfer, convey and assign all of Stockholder's right, title and interest in and to all of the Exchange Shares held by the Stockholder, free and clear of any and all liens or encumbrances, to the Successor, and shall receive in exchange therefor the number and type of newly issued Replacement Shares. The Replacement Shares delivered in accordance with the terms hereof shall be deemed to have been delivered in full satisfaction of all rights pertaining to the Exchange Shares, and the Stockholder agrees and acknowledges that, upon receipt of the Stockholder's Replacement Shares, the Stockholder shall have no further rights as a stockholder of Subsidiary.

**2. CLOSING**. The closing of the Share Exchange shall take place remotely, and, subject to and conditioned on the fulfillment of the Pricing Condition, shall occur automatically immediately upon the effectiveness of the Conversion and the filing of the initial certificate of incorporation of the Successor with the Secretary of State of the State of Delaware (the "***Closing***"). At the Closing, the Exchange Shares shall be cancelled on the books and records of Subsidiary and the Replacement Shares shall be issued to the Stockholder. As soon as reasonably practicable following the Closing: (a) the Successor shall deliver to the Stockholder an electronic stock certificate representing the Replacement Shares being exchanged electronically; and (b) the Successor shall be entered into Subsidiary's stock ledger as the holder of the Exchange Shares and stock certificates shall be issued by Subsidiary to the Successor evidencing the

Successor's ownership thereof. For the purposes hereof, the "***Pricing Condition***" shall be fulfilled in the event that the Company and Successor have used commercially reasonable efforts to ensure that the IPO price per share of the Successor's common stock has been agreed by the Successor and its IPO underwriters on the same day as the effectiveness of the Conversion and the Closing.

**3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY**. The Company hereby represents and warrants to the Stockholder that the statements in the following paragraphs of this Section 3 are all true and complete as of the Agreement Date:

**3.1. Organization, Good Standing, Power and Qualification**. The Company is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite limited liability company power and authority to carry on its business as now conducted and as presently proposed to be conducted..

**3.2. Capitalization**. Pursuant to the Company's Amended and Restated Operating Agreement, as amended (the "***Restated Operating Agreement***"), the authorized Shares (as defined in the Restated Operating Agreement) of the Company consist, as of the Agreement Date, of:

(a) 17,000,000 Common Shares (as defined in the Restated Operating Agreement), 2,596,073 of which are issued and outstanding, 9,828,498 of which are reserved for issuance upon conversion of the Series A Preferred Shares, and 4,145,441 of which are reserved for issuance upon conversion of the Series B Preferred Shares. The rights, privileges and preferences of the Common Shares are as stated in the Restated Operating Agreement and as provided by the Delaware Limited Liability Company Act. All of the outstanding Common Shares have been duly authorized, are fully paid and nonassessable and were issued in compliance with all applicable federal and state securities laws.

(b) 13,973,939 Preferred Shares (as defined in the Restated Operating Agreement), 9,828,498 of which have been designated Series A Preferred Shares, 9,828,498 of which are issued and outstanding, and 4,145,441 of which have been designated Series B Preferred Shares, 4,145,441 of which are issued and outstanding. The rights, privileges and preferences of the Preferred Shares are as stated in the Restated Operating Agreement and as provided by the LLC Act.

(c) The Company has reserved 3,838,356 Incentive Shares (as defined in the Restated Operating Agreement) for issuance to officers, managers, employees and consultants of the Company pursuant to its Incentive Share Plan duly adopted by the Board and approved by the Company's members. The rights, privileges and preferences of the Incentive Shares are as stated in the Restated Operating Agreement and as provided by the LLC Act.

(d) As a result of the Conversion and the consummation of the IPO, all of the foregoing Common Shares and Preferred Shares will convert into Common Stock of the Successor.

(e) As of immediately prior to the consummation of the IPO, the Replacement Shares shall represent no less than twelve percent (12%) of the Successor's Fully Diluted Capitalization. For purposes hereof, "**Fully Diluted Capitalization**" shall mean the Successor's total number of shares of issued and outstanding Common Stock, assuming full conversion or exercise of all convertible and exercisable securities (including Preferred Stock) into Common Stock and including, for this purpose, any shares then available for issuance but not subject to outstanding grants under the Company's Incentive Share Plan but excluding, for this purpose, (i) any new equity incentive, employee stock purchase or similar other plans created in connection with the IPO (or increases to existing plans in connection with the IPO) or (ii) any shares issuable in the IPO.

**3.3. Due Authorization**. All corporate action on the part of the Company's directors necessary for (i) the authorization, execution, delivery of and the performance of all obligations of the Company and Successor, as applicable, under this Agreement and (ii) the authorization, issuance, reservation for issuance and delivery of all of the Replacement Shares pursuant to this Agreement has been taken or will be taken prior to the Closing. This Agreement, when executed and delivered by the Company, will constitute valid and legally binding obligations of the Company, enforceable in accordance with its terms, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization or others laws of general application relating to or affecting the enforcement of creditors' rights generally, (ii) applicable securities laws limits on indemnification and (iii) the effect of rules of law governing the availability of equitable remedies.

**3.4. Valid Issuance of Stock**.

(a) The Replacement Shares, when paid for and issued as provided in this Agreement, will be duly authorized and validly issued, fully paid and nonassessable.

(b) Assuming the accuracy of the representations made by the Stockholder in Section 4 hereof, the offer and exchange of the Exchange Shares for the Replacement Shares in accordance with this Agreement are exempt from the registration and prospectus delivery requirements of the Securities Act of 1933, as amended (the "***1933 Act***"), and the securities registration and qualification requirements of the currently effective provisions of applicable state securities laws.

**4. REPRESENTATIONS, WARRANTIES AND CERTAIN AGREEMENTS OF THE STOCKHOLDER**. The Stockholder hereby represents and warrants to the Company and the Successor, as applicable, and to Subsidiary, that the statements in the following paragraphs of this Section 4 are all true and complete as of the Agreement Date and as of the Closing:

**4.1. Authorization**. This Agreement constitutes the Stockholder's valid and legally binding obligation, enforceable in accordance with its terms except as may be limited by (i) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally, (ii) applicable federal or state securities laws limits on indemnification and (iii) the effect of rules of law governing the availability of equitable remedies. The Stockholder has full power and authority to enter into this Agreement.

**4.2. Title to Exchange Shares**. The Stockholder has good and marketable title to, and is the legal owner of, the Exchange Shares to be exchanged by the Stockholder under this Agreement, free and clear of all pledges, liens, security interests and encumbrances. The Stockholder agrees not to sell or transfer, or create or subject to any encumbrance, pledge, lien or mortgage, any interest in the Exchange Shares prior to the Closing. The Stockholder hereby confirms that, after giving effect to the Closing, the Stockholder will have no interest in or rights to any securities of Subsidiary that are not being exchanged into securities of the Successor in accordance with the terms of this Agreement, and all of the Stockholder's interests in and rights to securities of Subsidiary will be so exchanged or extinguished at the Closing in accordance with the terms of this Agreement.

**4.3. Exchange for Own Account**. The Replacement Shares to be acquired by the Stockholder hereunder will be acquired for investment for the Stockholder's own account, not as a nominee or agent, and not with a view to the public resale or distribution thereof within the meaning of the 1933 Act, and the Stockholder has no present intention of selling, granting any participation in or otherwise distributing the same.

**4.4. Disclosure of Information**. At no time was the Stockholder presented with or solicited by any publicly issued or circulated newspaper, mail, radio, television or other form of general advertising or solicitation in connection with the offer, sale, purchase or exchange of the Replacement Shares. The Stockholder has received or has had full access to all the information that the Stockholder considers necessary or appropriate to make an informed investment decision with respect to the Replacement Shares to be acquired by the Stockholder under this Agreement. The Stockholder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Replacement Shares and to obtain additional information necessary to verify any information furnished to the Stockholder or to which the Stockholder had access, and such answers and additional information have been received by the Stockholder to the Stockholder's satisfaction. The foregoing, however, does not in any way limit or modify the representations and warranties made by the Company in Section 3.

**4.5. Investment Experience**. The Stockholder understands that the acquisition of the Replacement Shares involves substantial risk. The Stockholder (i) has experience as an investor in securities of companies in the development stage and acknowledges that the Stockholder is able to fend for itself, can bear the economic risk of the Stockholder's investment in the Replacement Shares, and has such knowledge and experience in financial or business matters that the Stockholder is capable of evaluating the merits and risks of this investment in the Replacement Shares and protecting the Stockholder's own interests in connection with this investment, and/or (ii) has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables the Stockholder to be aware of the character, business acumen and financial circumstances of such persons. The Stockholder's current permanent residence is as set forth on signature pages hereto.

**4.6. Accredited Investor**. The Stockholder: is an "accredited investor" within the meaning of Rule 501 of Regulation D promulgated by the United States Securities and Exchange Commission ("***SEC***") under the 1933 Act.

**4.7. Restricted Securities**. The Stockholder understands that the Replacement Shares are characterized as "restricted securities" under the 1933 Act inasmuch as they are being acquired from the Successor in a transaction not involving a public offering and that under the 1933 Act and applicable regulations thereunder such securities may be resold without registration under the 1933 Act only in certain limited circumstances. In this connection, the Stockholder represents that the Stockholder is familiar with Rule 144 promulgated by the SEC under the 1933 Act and understands the resale limitations imposed by Rule 144 and by the 1933 Act. The Stockholder understands that the Successor is under no obligation to register any of the securities sold hereunder. The Stockholder understands that no public market now exists for any of the Replacement Shares and that none of the Company, Subsidiary or any of their respective officers, directors, employees or agents has made any assurances that a public market will ever exist for the Replacement Shares.

**4.8. Further Limitations on Disposition**. Without in any way limiting the representations set forth above, the Stockholder further agrees not to make any disposition of all or any portion of the Replacement Shares unless and until:

(a) there is then in effect a registration statement under the 1933 Act covering such proposed disposition and such disposition is made pursuant to such registration statement;

(b) following the IPO, the transfer is made pursuant to SEC Rule 144; or

(c) the Stockholder shall have notified the Successor of the proposed disposition and shall have furnished the Successor with a statement of the circumstances surrounding the proposed disposition, and, at the expense of the Stockholder or its transferee, with an opinion of counsel, satisfactory to the Successor in its sole discretion, that such disposition will not require registration of such securities under the 1933 Act or any state securities laws.

**4.9. Legends**. It is understood that the certificates evidencing the Replacement Shares will bear legends as required by United States federal or state securities laws.

**4.10. Compliance with Law**. The Stockholder has satisfied itself as to the full observance of the laws of any jurisdiction applicable to the Stockholder in connection with any invitation to subscribe for, or the Stockholder's acquisition of, the Replacement Shares or any use of this Agreement, including (i) the legal requirements within each jurisdiction applicable to the Stockholder for the acquisition of the Replacement Shares, (ii) any foreign exchange restrictions applicable to such acquisition, (iii) any governmental or other consents that may need to be obtained, and (iv) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale, exchange or other transfer of any Replacement Shares. The Stockholder's subscription and payment for the Replacement Shares will not violate any applicable securities or other laws of any jurisdiction applicable to the Stockholder and no consent or approval of any governmental entity is required for the Stockholder to enter into this Agreement and consummate the transactions contemplated herein, including, without limitation, the commencement of the Share Exchange, the Closing and the Stockholder's subscription and payment for the Replacement Shares.

**4.11. Tax Matters**. The Stockholder has reviewed, or has had the opportunity to review, with the Stockholder's own tax advisors, the United States federal, state, local and foreign tax consequences of the Stockholder's acquisition of the Replacement Shares and of the transactions contemplated by this Agreement. The Stockholder is relying solely on such advisors with respect to tax consequences and not on any statements or representations of the Company or any of the Company's officers, directors, employees or agents other than the representations and warranties set forth in Section 3 hereof. The Stockholder understands that the Stockholder (and not the Company or the Successor) shall be responsible for the Stockholder's own tax liability that may arise as a result of the Stockholder's acquisition of the Replacement Shares or the transactions contemplated by this Agreement.

**5. ADDITIONAL AGREEMENTS.**

**5.1. Termination of Agreements**. The Company, Subsidiary and the Stockholder hereby agree that the Subsidiary Financing Documents are hereby terminated effective as of the Closing, and shall be of no further force or effect. Furthermore, Subsidiary and the Stockholder agree that, other than the ATLA (and any side letters associated therewith) and this Agreement, any and all other agreements between the Stockholder and Subsidiary are hereby terminated and cancelled and shall be null and void from and after the date hereof.

**5.2. Frustration of Purpose**. In the event that the Conversion and the Exchange have occurred but the IPO is not consummated prior to the Outside Date (as defined below), the Company, Subsidiary, and Successor shall, upon the Stockholder's request, use reasonable best efforts and cooperate in good faith with the Stockholder to unwind the transactions contemplated hereby and restore the Stockholder's rights to be as they were on the date hereof.

**5.3. RELEASE**.

(a) EFFECTIVE UPON THE CLOSING, THE STOCKHOLDER, ON BEHALF OF ITSELF AND EACH OF ITS AFFILIATES UNDER COMMON CONTROL WITH THE STOCKHOLDER (EACH A "***RELEASING PARTY***"), HEREBY UNCONDITIONALLY AND IRREVOCABLY RELEASES, WAIVES AND FOREVER DISCHARGES THE COMPANY (INCLUDING AS THE SUCCESSOR), SUBSIDIARY, EACH OF THEIR RESPECTIVE AFFILIATES, AND ALL OF THEIR RESPECTIVE PAST AND PRESENT DIRECTORS, OFFICERS, MANAGERS, EMPLOYEES, MEMBERS, AND

STOCKHOLDERS (COLLECTIVELY, THE "***RELEASED PARTIES***"), FROM ANY AND ALL RIGHTS, ACTIONS, CAUSES OF ACTION, SUITS, DEBTS, SUMS OF MONEY, ACCOUNTS, RECKONINGS, DAMAGES, JUDGMENTS, EXECUTIONS, LOSSES, CLAIMS AND DEMANDS WHATSOEVER, OF WHATEVER KIND OR NATURE, UNDER ANY CONTRACT, AGREEMENT, FEDERAL, STATE OR LOCAL STATUTE, ORDINANCE OR UNDER COMMON LAW OR OTHERWISE, THAT ANY RELEASING PARTY EVER HAD, HAS NOW OR MAY HAVE IN THE FUTURE ("***CLAIMS***") AGAINST ANY OF THE RELEASED PARTIES ARISING SOLELY FROM (A) THE STOCKHOLDER'S OWNERSHIP OF THE EXCHANGE SHARES PRIOR TO THE CLOSING OR (B) ANY OTHER AGREEMENT OR TRANSACTION BETWEEN THE STOCKHOLDER, ON ONE HAND, AND THE SUBSIDIARY AND/OR THE COMPANY (INCLUDING AS THE SUCCESSOR), ON THE OTHER HAND, ENTERED INTO PRIOR TO THE CLOSING, IN EACH CASE OTHER THAN THE ATLA (AND ANY SIDE LETTERS ASSOCIATED THEREWITH) AND THIS AGREEMENT.

(b) The Stockholder hereby acknowledges that the Stockholder is aware of the principle that a general release does not extend to claims that the releasor does not know or suspect to exist in his or her favor at the time of executing the release, which, if known by him or her, must have materially affected his or her settlement with the releasee. With knowledge of this principle, the Stockholder hereby agrees to expressly waive any rights v may have to that effect.

(c) The Company does not intend that the Stockholder release claims that the Stockholder may not release as a matter of law, including but not limited to claims for indemnity, or any claims for enforcement of this Agreement. To the fullest extent permitted by law, any dispute regarding the scope of this general release shall be determined in accordance with Section 6.5 below.

**5.4. "Market Stand-off" Agreement**. Stockholder hereby agrees that, during the period commencing on the date of the final prospectus relating to the registration by the Successor of shares of its Common Stock or any other equity securities under the 1933 Act on a registration statement on Form S-1, and ending on the date specified by the Successor and the managing underwriter (such period not to exceed one hundred eighty (180) days), Stockholder will not, without the prior written consent of the Successor or the managing underwriter:

(a) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right, or warrant to purchase or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock, or any securities convertible into or exercisable or exchangeable (directly or indirectly) for Common Stock, held immediately before the effective date of the registration statement for such offering; or

(b) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of such securities, whether any such transaction described in clause (a) or (b) above is to be settled by delivery of Common Stock or other securities, in cash, or otherwise.

The foregoing provisions of this Section 5.3 shall only apply to the IPO and shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, and shall be applicable to the Stockholder's only if all officers, directors, and stockholders individually owning more than 1% of the Successor's outstanding Common Stock (after giving effect to conversion into Common Stock of all outstanding Preferred Stock) are similarly bound. For purposes of this Section 5.3, the term "Successor" shall include any wholly-owned subsidiary of the Successor into which the Successor merges or

consolidates. In order to enforce the foregoing covenant, the Successor shall have the right to place restrictive legends on the certificate or instrument representing the shares subject to this Section 5.3 and to impose stop transfer instructions with respect to such shares until the end of such period. The underwriters in connection with such registration are intended third-party beneficiaries of this Section 5.3 and shall have the right, power, and authority to enforce the provisions hereof as though they were a party hereto. Stockholder further agrees to execute such agreements as may be reasonably requested by the underwriters in connection with such registration that are consistent with this Section 5.4 or that are necessary to give further effect thereto.

**5.5. Reports Under Exchange Act**. To the extent and during the time period required to make available to the Stockholder the benefits of SEC Rule 144 and any other rule or regulation of the SEC that may at any time permit the Stockholder to sell the Replacement Shares to the public without registration following the IPO, the Successor shall:

(a) make and keep available adequate current public information, as those terms are understood and defined in SEC Rule 144, at all times after the effective date of the registration statement filed by the Successor for the IPO;

(b) use commercially reasonable efforts to file with the SEC in a timely manner all reports and other documents required of the Successor under the 1933 Act and the Securities Exchange Act of 1934 (the "***Exchange Act***") (at any time after the Successor has become subject to such reporting requirements);

(c) furnish to the Stockholder, so long as the Stockholder owns any Replacement Shares, forthwith upon request (i) to the extent accurate, a written statement by the Successor that it has complied with the reporting requirements of SEC Rule 144 (at any time after 90 days after the effective date of the registration statement filed by the Successor for the IPO), the 1933 Act, and the Exchange Act (at any time after the Successor has become subject to such reporting requirements); and (ii) such other information as may be reasonably requested in availing the Stockholder of any rule or regulation of the SEC that permits the selling of any such securities without registration (at any time after the Successor has become subject to the reporting requirements under the Exchange Act); and

(d) upon the request of the Stockholder, cooperate with the Stockholder and the Successor's transfer agent to promptly remove legends from the Replacement Shares when legally able to do so and transfer the Replacement Shares to a brokerage account of the Stockholder.

**6. GENERAL PROVISIONS**.

**6.1. Termination**. This Agreement may be terminated solely with the written consent of the Stockholder and the Company (or the Successor, if applicable); provided, however, that in the event that the Closing has not occurred on or prior to August 15, 2021 (the "***Outside Date***"), this Agreement may be terminated by either the Company (or the Successor, if applicable) or the Stockholder by delivery of written notice to the other parties hereto, unless such failure of the Closing to occur has been caused primarily by any breach of this Agreement by the party seeking to so terminate this Agreement.

**6.2. Survival of Warranties**. The representations, warranties and covenants of the Company, Subsidiary and Stockholder contained in this Agreement shall survive the execution and delivery of this Agreement and the Closing and shall in no way be affected by any investigation of the subject matter thereof made by or on behalf of Stockholder or the Company, as the case may be.

**6.3. Successors and Assigns**. Except as otherwise provided in this Agreement, this Agreement, and the rights and obligations of the parties hereunder, will be binding upon and inure to the benefit of their respective successors, assigns, heirs, executors, administrators and legal representatives. This Agreement, and the rights and obligations of a party hereunder, may not be assigned by such party without the prior written consent of the other parties hereto. Notwithstanding anything to the contrary herein, this Agreement shall be deemed automatically (and without the need for any consent or action) assigned by the Company to the Successor upon the Conversion and the Successor shall succeed to all of the Company rights and obligations hereunder.

**6.4. Governing Law**. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflict of laws principles.

**6.5. Dispute Resolution.** The parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of Delaware and to the jurisdiction of the United States District Court for the District of Delaware for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the state courts of Delaware or the United States District Court for the District of Delaware, and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

**6.6. Counterparts**. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, and all of which together shall constitute one and the same agreement. Any signature page hereto delivered by e-mail (including in portable document format (pdf), as a joint photographic experts group (jpg) file, or otherwise) shall be binding to the same extent as an original signature page, with regard to any agreement subject to the terms hereof or any amendment thereto.

**6.7. Titles and Headings**. The titles, captions and headings of this Agreement are included for ease of reference only and will be disregarded in interpreting or construing this Agreement. Unless otherwise specifically stated, all references herein to “sections” and “exhibits” will mean “sections” and “exhibits” to this Agreement.

**6.8. Notices**. Any and all notices required or permitted to be given to a party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed given on the earliest of the following: (i) at the time of personal delivery, if delivery is in person; (ii) at the time of transmission by e-mail, addressed to the other party at its e-mail address specified herein, provided that in the case of transmission received after 5:00 p.m. at the recipient’s location or on a day that is not a business day at the recipient’s location, notice will be deemed given on the next business day at the recipient’s location; (iii) one business day after deposit with an express courier for delivery on the next business day within the United States, or two business days after such deposit for delivery no later than the second business day outside the United States, with proof of delivery from the courier requested; or (iv) five business days after deposit in the United States mail by certified mail, return receipt requested, for delivery within the United States.

All notices for delivery outside the United States will be sent by e-mail or by internationally recognized express courier. All notices not delivered personally or by e-mail will be sent with postage and/or other charges prepaid. All notices will be properly addressed to the party to be notified at the address or e-mail address as follows, or at such other address or e-mail address as such other party may designate by notice given in accordance with this Section 7.6, as follows;

(a) if to the Stockholder, at the address set forth opposite the Stockholder's name on the Stockholder's signature page hereto;

(b) if to the Company (or the Successor, if applicable), marked "Attention: CEO" at the address set forth on the Company's signature page hereto;

(c) if to Subsidiary, marked "Attention: CEO" at the address set forth on Subsidiary's signature page hereto.

**6.9. Amendments and Waivers**. Any term of this Agreement may be amended only with the written consent of the Company (or the Successor, if applicable) and the Stockholder. Any amendment effected in accordance with this Section 6.9 shall be binding upon the parties hereto. Any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) by the Company and the Stockholder. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. No waiver granted under this Agreement as to any one provision herein shall constitute a subsequent waiver of such provision or of any other provision herein, nor shall it constitute the waiver of any performance other than the actual performance specifically waived.

**6.10. Severability**. If any provision of this Agreement is determined by any court or arbitrator of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such provision will be enforced to the maximum extent possible given the intent of the parties hereto. If such clause or provision cannot be so enforced, such provision shall be stricken from this Agreement and the remainder of this Agreement shall be enforced as if such invalid, illegal or unenforceable clause or provision had (to the extent not enforceable) never been contained in this Agreement. Notwithstanding the foregoing, if the value of this Agreement based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then the parties agree to substitute such provision(s) through good faith negotiations with a valid, legal and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid, illegal or unenforceable provision.

**6.11. Entire Agreement**. This Agreement and the documents referred to herein, together with all the Exhibits hereto, constitute the entire agreement and understanding of the parties with respect to the subject matter of this Agreement, and supersede any and all prior and contemporaneous understandings and agreements, whether oral or written, between or among the parties hereto with respect to the specific subject matter hereof.

**6.12. Further Assurances**. The parties agree to execute such further documents and instruments and to take such further actions as may be reasonably necessary to carry out the purposes and intent of this Agreement.

**6.13. Third Parties**. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

[*Signature page follows*]

**IN WITNESS WHEREOF**, the parties hereto have executed this Share Exchange Agreement as of the date first written above.

**COMPANY:**

**DAY ONE BIOPHARMACEUTICALS HOLDING COMPANY, LLC.**

By: /s/ Jeremy Bender
Name: Jeremy Bender
Title: Chief Executive Officer

Address:

Email:

**SUBSIDIARY:**

**DOT THERAPEUTICS-1, INC.**

By: /s/ Jeremy Bender
Name: Jeremy Bender
Title: Chief Executive Officer

Address:

Email:

**IN WITNESS WHEREOF**, the parties hereto have executed this Share Exchange Agreement as of the date first written above.

**STOCKHOLDER:**

**MILLENNIUM PHARMACEUTICALS, INC.**

By: /s/ Michael Martin
Name: Michael Martin
Title: President, Takeda Ventures, Inc.

Address: 9625 Towne Center Drive
San Diego, CA 92121

Email:

**EXHIBIT 21.1**

**Subsidiaries of Day One Biopharmaceuticals Holding Company, LLC**

| Name of Subsidiary | Jurisdiction |
|---|---|
| DOT Therapeutics-1, Inc. | Delaware |
| DOT Therapeutics-2, Inc. | Delaware |

**Exhibit 23.1**

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption “Experts” and to the use of our report dated March 19, 2021, in the Registration Statement (Form S-1) and related Prospectus of Day One Biopharmaceuticals Holding Company, LLC, for the registration of shares of its common stock.

/s/ Ernst & Young LLP

Redwood City, California

May 4, 2021