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

FORM 10-Q

(Mark One)

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

FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2015

OR

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

FOR THE TRANSITION PERIOD FROM _____ TO _____

Commission File Number 001-36500

CymaBay Therapeutics, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

**7999 Gateway Blvd, Suite 130
Newark, CA**
(Address of principal executive offices)

94-3103561
(I.R.S. Employer
Identification No.)

94560
(Zip Code)

(510) 293-8800
(Registrant's telephone number, including area code)

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

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

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

Large accelerated filer

Accelerated filer

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

Smaller reporting company

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

As of November 2, 2015, there were 23,447,003 shares of the registrant's Common Stock outstanding.

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CYMABAY THERAPEUTICS, INC.
QUARTERLY REPORT ON FORM 10-Q
FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2015

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

CymaBay Therapeutics, Inc.
Condensed Balance Sheets
(In thousands, except share and per share amounts)

	September 30, 2015 (unaudited)	December 31, 2014 (Note 2)
Assets		
Current assets:		
Cash and cash equivalents	\$ 6,691	\$ 11,586
Marketable securities	40,162	23,209
Contract receivables	—	211
Accrued interest receivable	209	136
Prepaid expenses	1,491	1,991
Other current assets	20	96
Total current assets	48,573	37,229
Property and equipment, net	69	86
Other assets	221	159
Total assets	\$ 48,863	\$ 37,474
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	\$ 707	\$ 2,085
Accrued liabilities	4,017	3,388
Warrant liability	1,356	13,596
Facility loan	—	1,355
Accrued interest payable	73	35
Total current liabilities	6,153	20,459
Facility loan, less current portion	9,198	3,152
Other liabilities	18	13
Total liabilities	15,369	23,624
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$0.0001 par value: 10,000,000 shares authorized; no shares issued and outstanding	—	—
Common stock, \$0.0001 par value: 100,000,000 shares authorized; 23,447,003 and 14,696,108 shares issued and outstanding as of September 30, 2015 and December 31, 2014, respectively	2	1
Additional paid-in capital	423,809	394,622
Accumulated other comprehensive loss	(8)	(14)
Accumulated deficit	(390,309)	(380,759)
Total stockholders' equity	33,494	13,850
Total liabilities and stockholders' equity	\$ 48,863	\$ 37,474

See accompanying notes.

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CymaBay Therapeutics, Inc.
Condensed Statements of Operations and Comprehensive Loss
(In thousands, except share and per share information)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2015	2014	2015	2014
Operating expenses:				
Research and development	\$ 4,528	\$ 3,848	\$ 12,975	\$ 10,546
General and administrative	2,201	1,687	7,075	5,853
Total operating expenses	6,729	5,535	20,050	16,399
Loss from operations	(6,729)	(5,535)	(20,050)	(16,399)
Other income (expense):				
Interest income	46	19	99	48
Interest expense	(265)	(191)	(584)	(565)
Other income (expense), net	1,083	(254)	10,985	(2,279)
Net loss	\$ (5,865)	\$ (5,961)	\$ (9,550)	\$ (19,195)
Net loss	\$ (5,865)	\$ (5,961)	\$ (9,550)	\$ (19,195)
Other comprehensive (loss) income:				
Unrealized gain (loss) on marketable securities	5	(15)	6	(17)
Other comprehensive income (loss)	5	(15)	6	(17)
Comprehensive loss	\$ (5,860)	\$ (5,976)	\$ (9,544)	\$ (19,212)
Basic net loss per common share	\$ (0.27)	\$ (0.44)	\$ (0.55)	\$ (1.72)
Diluted net loss per common share	\$ (0.27)	\$ (0.44)	\$ (0.58)	\$ (1.72)
Weighted average common shares outstanding used to calculate basic net loss per common share	21,674,742	13,468,081	17,368,309	11,148,695
Weighted average common shares outstanding used to calculate diluted net loss per common share	21,674,742	13,468,081	17,384,000	11,148,695

See accompanying notes.

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CymaBay Therapeutics, Inc.
Condensed Statements of Cash Flows
(In thousands)
(unaudited)

	Nine Months Ended	
	September 30,	
	2015	2014
Operating activities		
Net loss	\$ (9,550)	\$(19,195)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	17	13
Non-employee stock-based compensation expense	22	5
Employee and director stock-based compensation expense	1,852	1,012
Amortization of premium on marketable securities	347	289
Non-cash interest associated with debt discount accretion	152	144
Change in fair value of warrant liability	(10,985)	2,289
Loss on sale of property and equipment	—	2
Changes in assets and liabilities:		
Contract receivables	211	96
Accrued interest receivable	(73)	(155)
Prepaid expenses	500	(1,038)
Other assets	14	(35)
Accounts payable	(1,378)	350
Accrued liabilities	629	2,491
Accrued interest payable	109	80
Other liabilities	5	10
Net cash used in operating activities	(18,128)	(13,642)
Investing activities		
Purchases of property and equipment	—	(103)
Purchases of marketable securities	(41,772)	(24,782)
Proceeds from sales and maturities of marketable securities	24,478	5,049
Net cash used in investing activities	(17,294)	(19,836)
Financing activities		
Proceeds from issuance of common stock and warrants, net of costs	25,375	25,430
Proceeds from facility loan, net	9,482	—
Payment of loan principal	(4,756)	—
Proceeds from issuance of common stock upon warrant exercises	426	—
Proceeds from issuance of common stock upon exercise of employee stock options	—	3
Net cash provided by financing activities	30,527	25,433
Net decrease in cash and cash equivalents	(4,895)	(8,045)
Cash and cash equivalents at beginning of period	11,586	24,401
Cash and cash equivalents at end of period	<u>\$ 6,691</u>	<u>\$ 16,356</u>
Supplemental disclosure of cash flow information		
Cash paid for interest	\$ 316	\$ 328
Issuance of common stock warrants	258	443
Issuance of common stock upon warrant exercises	1,513	432
Noncash issuance costs incurred in common stock financing	—	453
Reclassification of incentive awards to equity	—	121

See accompanying notes.

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CymaBay Therapeutics, Inc. Notes to Condensed Financial Statements (unaudited)

1. Organization and Description of Business

CymaBay Therapeutics, Inc. (the “Company” or “CymaBay”) is a biopharmaceutical company focused on developing therapies to treat metabolic diseases with high unmet medical need, including serious rare and orphan disorders. The Company’s lead product candidate, arhalofenate, is being developed for the treatment of gout. The Company’s second product candidate, MBX-8025, is being developed for the treatment of certain orphan diseases, including homozygous familial hypercholesterolemia (HoFH) and primary biliary cirrhosis (PBC). The Company was incorporated in Delaware in October 1988 as Transtech Corporation. The Company’s headquarters and operations are located in Newark, California and it operates in one segment.

Liquidity

The Company has incurred net operating losses and negative cash flows from operations since its inception. During the nine months ended September 30, 2015, the Company incurred a net loss of \$9.6 million and used \$18.1 million of cash in operations. At September 30, 2015, the Company had an accumulated deficit of \$390.3 million. CymaBay expects to incur increased research and development expenses as it continues to study its product candidates in clinical trials. To date, none of the Company’s product candidates have been approved for marketing and sale, and the Company has not recorded any revenue from product sales. As a result, management expects operating losses to continue in future years. The Company’s ability to achieve profitability is dependent primarily on its ability to successfully develop, acquire or in-license additional product candidates, continue clinical trials for product candidates currently in clinical development, obtain regulatory approvals, and support commercialization activities for partnered product candidates. Products developed by the Company will require approval of the U.S. Food and Drug Administration (FDA) or a foreign regulatory authority prior to commercial sale. The regulatory approval process is expensive, time-consuming, and uncertain, and any denial or delay of approval could have a material adverse effect on the Company. Even if approved, the Company’s products may not achieve market acceptance and will face competition from both generic and branded pharmaceutical products.

As of September 30, 2015, the Company’s cash, cash equivalents and marketable securities totaled \$46.9 million. These funds are expected to satisfy the Company’s liquidity requirements through at least the end of the fourth quarter of 2016. The Company expects to incur substantial expenditures in the future for the development and potential commercialization of its product candidates. Because of this, the Company expects its future liquidity and capital resource needs will be impacted by numerous factors, including but not limited to, the timing of initiation of planned clinical trials, including phase 2 trials to study the therapeutic benefits of MBX-8025 on patients with certain orphan diseases as well as a phase 3 clinical trial to study the therapeutic benefits of arhalofenate on patients with gout. The Company will therefore continue to require additional financing to develop its products and fund future operating losses and will seek funds through equity financings, debt, collaborative or other arrangements with corporate sources, or through other sources of financing. It is unclear if or when any such financing transactions will occur, on satisfactory terms or at all. The Company’s failure to raise capital as and when needed could have a negative impact on its financial condition and its ability to pursue its business strategies. If adequate funds are not available, the Company may be required to reduce development activities or to close its business.

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying interim condensed financial statements are unaudited. These unaudited interim financial statements have been prepared in accordance U.S. GAAP (“GAAP”) and following the requirements of the United States Securities and Exchange Commission (“SEC”) for interim reporting. As permitted under those rules, certain footnotes or other financial information that are normally required by GAAP can be condensed or omitted. In management’s opinion, the unaudited interim financial statements have been prepared on the same basis as the audited financial statements and include all adjustments, which include only normal recurring adjustments, necessary for the fair presentation of the Company’s financial position and its results of operations and comprehensive loss and its cash flows for the periods presented. These statements do not include all disclosures required by GAAP and should be read in conjunction with the Company’s financial statements and accompanying notes for the fiscal year ended December 31, 2014, which is contained in the Company’s Annual Report on Form 10-K as filed with the SEC on March 23, 2015. The results for the three and nine months ended September 30, 2015, are not necessarily indicative of results to be expected for the year or for any other period.

Use of Estimates

The financial statements have been prepared in accordance with GAAP, which requires management to make estimates and assumptions that affect the amounts and disclosures reported in the financial statements and accompanying notes. Management bases its estimates on historical experience and on assumptions believed to be reasonable under the circumstances. The estimation process

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often may yield a range of potentially reasonable estimates of the ultimate future outcomes, and management must select an amount that falls within that range of reasonable estimates. Actual results could differ materially from those estimates. The Company believes significant judgment is involved in estimating stock-based compensation, accrued clinical liabilities, and equity and liability instrument valuations.

Fair Value of Financial Instruments

The Company's financial instruments during the periods reported consist of cash and cash equivalents, contract receivables, short-term marketable securities, accounts payable, accrued expenses, and warrant liabilities. Fair value estimates of these instruments are made at a specific point in time, based on relevant market information. These estimates may be subjective in nature and involve uncertainties and matters of significant judgment and therefore cannot be determined with precision.

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. Assets and liabilities that are measured at fair value are reported using a three-level fair value hierarchy that prioritizes the inputs used to measure fair value. This hierarchy maximizes the use of observable inputs and minimizes the use of unobservable inputs and is as follows:

Level 1 — Quoted prices in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.

Level 2 — Inputs other than quoted prices in active markets that are observable for the asset or liability, either directly or indirectly.

Level 3 — Inputs that are unobservable for the asset or liability.

The carrying amounts of financial instruments such as cash and cash equivalents, contract receivables, accounts payable and accrued expenses approximate the related fair values due to the short-term maturities of these instruments. The carrying value of the facility loan is reflective of the fair value based on market interest rates.

Description	As of September 30, 2015			
	<i>(In thousands)</i>			
	Level 1	Level 2	Level 3	Fair Value
Money market funds	\$5,294	\$ —	\$ —	\$ 5,294
Corporate debt and asset backed securities	—	41,362	—	41,362
Total assets measured at fair value	\$5,294	\$41,362	\$ —	\$ 46,656
Warrant liability	\$ —	\$ —	\$1,356	\$ 1,356
Total liabilities measured at fair value	\$ —	\$ —	\$1,356	\$ 1,356

Description	As of December 31, 2014			
	<i>(In thousands)</i>			
	Level 1	Level 2	Level 3	Fair Value
Money market funds	\$9,941	\$ —	\$ —	\$ 9,941
Corporate debt and asset backed securities	—	23,209	—	23,209
Total assets measured at fair value	\$9,941	\$23,209	\$ —	\$ 33,150
Warrant liability	\$ —	\$ —	\$13,596	\$ 13,596
Total liabilities measured at fair value	\$ —	\$ —	\$13,596	\$ 13,596

Marketable securities consist of available-for-sale securities that are reported at fair value, with the related unrealized gains and losses included in accumulated other comprehensive income (loss). The Company values cash equivalents and marketable securities using quoted market prices or alternative pricing sources and models utilizing observable market inputs and, as such, classifies cash equivalents and marketable securities within Level 1 or Level 2.

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The Company holds a Level 3 liability associated with common stock warrants that were issued in connection with the Company's series of equity and debt transactions initiated in 2013 and completed in the first quarter of 2014 (referred to herein as the 2013 financing) as well as a debt refinancing transaction (referred to herein as the 2015 term loan facility) completed in the third quarter of 2015. The warrants are considered a liability due to redemption provisions outside the control of the Company and are valued using an option-pricing model, the inputs for which include potential value driving milestones, the exercise price of the warrants, market price of the underlying common stock, expected term, volatility based on a group of the Company's peers and the risk-free rate corresponding to the expected term of the warrants. Changes to any of the inputs to the option-pricing models used by the Company can have a significant impact on the estimated fair value of the warrants. For example, large declines in the value of the Company's common stock significantly decreased the estimated fair value of the Company's warrants resulting in significant revaluation gains in the nine months ended September 30, 2015.

The following table sets forth an activity summary which includes the changes in the fair value of the Company's Level 3 financial instruments (in thousands):

	Warrant Liability
Balance as of December 31, 2014	\$ 13,596
Issuance of financial instrument	258
Change in fair value	(10,985)
Settlement of financial instrument	(1,513)
Balance as of September 30, 2015	<u>\$ 1,356</u>

The gains and losses from remeasurement of Level 3 financial liabilities are recorded through other income (expense), net on the accompanying condensed statements of operations and comprehensive loss.

Cash, Cash Equivalents, and Marketable Securities

The Company considers all highly liquid investments with a remaining maturity of 90 days or less at the time of purchase to be cash equivalents. Cash and cash equivalents consist of deposits with commercial banks in checking, interest-bearing, and demand money market accounts. The Company invests excess cash in marketable securities with high credit ratings. These securities consist primarily of corporate debt and asset-backed securities and are classified as "available-for-sale." Management may liquidate any of these investments in order to meet the Company's liquidity needs in the next year. Accordingly, any investments with contractual maturities greater than one year from the balance sheet date are classified as short-term in the balance sheet.

Realized gains and losses from the sale of marketable securities, if any, are calculated using the specific identification method. Realized gains and losses and declines in value judged to be other-than-temporary are included in interest income or expense in the statements of operations and comprehensive loss. Unrealized holding gains and losses are reported in accumulated other comprehensive income (loss), in the balance sheet. To date, the Company has not recorded any impairment charges on its marketable securities related to other-than-temporary declines in market value. In determining whether a decline in market value is other-than-temporary, various factors are considered, including the cause, duration of time and severity of the impairment, any adverse changes in the investees' financial condition, and the Company's intent and ability to hold the security for a period of time sufficient to allow for an anticipated recovery in market value.

Restricted Cash

The Company is required to maintain compensating cash balances with financial institutions that provide the Company with its corporate credit cards. As of September 30, 2015 and December 31, 2014, cash restricted under these arrangements was \$170,000 and \$100,000, respectively. This amount is presented in other assets on the accompanying condensed balance sheets.

Concentration of Credit Risk

Cash, cash equivalents, and marketable securities consist of financial instruments that potentially subject the Company to a concentration of credit risk to the extent of the fair value recorded in the balance sheet. The Company invests cash that is not required for immediate operating needs primarily in highly liquid instruments that bear minimal risk. The Company has established guidelines relating to the quality, diversification, and maturities of securities to enable the Company to manage its credit risk.

Common Stock Warrant Liability

Warrants issued to common stock holders and lenders by the Company in conjunction with the 2013 financing and the 2015 term loan facility were classified as liabilities in the accompanying condensed balance sheets, as the terms for redemption of the underlying security were outside the Company's control. The warrants were recorded at fair value using either the Black-Scholes

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option pricing model, probability weighted expected return model or a binomial model, depending on the characteristics of the warrants. The fair value of these warrants is re-measured at each financial reporting period and immediately before exercise, with any changes in fair value being recognized as a component of other income (expense), net in the accompanying condensed statements of operations and comprehensive loss.

Research and Development Expenses

Research and development expenses consist of costs incurred in identifying, developing, and testing product candidates. These expenses consist primarily of costs for research and development personnel (including related stock-based compensation); contract research organizations and other third parties that assist in managing, monitoring, and analyzing clinical trials; investigator and site fees; laboratory services; consultants; contract manufacturing services; non-clinical studies, including materials; and allocated expenses, such as depreciation of assets, and facilities and information technology that support research and development activities. Research and development costs are expensed as incurred, including expenses that may or may not be reimbursed under research and development funding arrangements.

The expenses related to clinical trials are based upon estimates of the services received and efforts expended pursuant to contracts with multiple research institutions and clinical research organizations (CROs) that conduct and manage clinical trials on behalf of the Company. Expenses related to clinical trials are accrued based upon the level of activity incurred under each contract as indicated by such factors as progress made against specified milestones or targets in each period, patient enrollment levels, and other trial activities as reported by CROs. Accordingly, the Company's clinical trial accrual is dependent upon the timely and accurate reporting of expenses by clinical research organizations and other third-party vendors. Payments made to third parties under these clinical trial arrangements in advance of the receipt of the related services are recorded as prepaid assets, depending on the terms of the agreement, until the services are rendered.

Stock-Based Compensation

Employee and director stock-based compensation is measured at the grant date, based on the fair-value based measurements of the stock awards, and the portion that is ultimately expected to vest is recognized as an expense over the related vesting periods, net of estimated forfeitures. The Company calculates the fair-value based measurements of options using the Black-Scholes valuation model and recognizes expense using the straight-line attribution method.

Equity awards granted to non-employees are accounted for using the Black-Scholes valuation model to determine the fair value of such instruments. The fair value of equity awards granted to non-employees are re-measured over the related vesting period and amortized to expense as earned.

Income Taxes

The Company utilizes the liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on differences between the financial reporting and the tax bases of assets and liabilities and are measured using enacted tax rates and laws that will be in effect when the differences are expected to reverse. A valuation allowance is recorded when it is more likely than not that all or part of a deferred tax asset will not be realized.

The accounting guidance for uncertainty in income taxes prescribes a recognition threshold and measurement attribute criteria for the financial recognition and measurement of tax positions taken or expected to be taken in a tax return. For those benefits to be recognized, a tax position must be more likely than not to be sustained upon examination based on the technical merits of the position. The Company records interest related to income taxes, if any, as interest, and any penalties would be recorded as other expense in the statements of comprehensive income (loss). There was no interest or penalties related to income taxes recorded during the nine months ended September 30, 2015 and 2014.

Comprehensive Loss

Comprehensive loss includes net loss and net unrealized gains and losses on marketable securities, which are presented in a single continuous statement. Accumulated other comprehensive income (loss) is disclosed in the condensed balance sheets, and is stated net of related tax effects, if any.

Net Loss Per Common Share

Basic net loss per share of common stock is based on the weighted average number of shares of common stock outstanding equivalents during the period. Diluted net loss per share of common stock is calculated as the weighted average number of shares of common stock outstanding adjusted to include the assumed exercises of stock options and warrants, if dilutive.

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The calculation of diluted loss per share also requires that, to the extent the average market price of the underlying shares for the reporting period exceeds the exercise price of the warrants and the presumed exercise of such securities are dilutive to earnings (loss) per share for the period, adjustments to net income or net loss used in the calculation are required to remove the change in fair value of the warrants for the period. Likewise, corresponding adjustments to the denominator are required to reflect the related dilutive shares.

The Company's computation of loss per share is as follows (in thousands, except share and per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2015	2014	2015	2014
Numerator:				
Net loss allocated to common stock-basic	\$ (5,865)	\$ (5,961)	\$ (9,550)	\$ (19,195)
Adjustments for revaluation of warrants	—	—	(505)	—
Net loss allocated to common stock-diluted	<u>(5,865)</u>	<u>(5,961)</u>	<u>(10,055)</u>	<u>(19,195)</u>
Denominator:				
Weighted average number of common stock shares outstanding — basic	21,674,742	13,468,081	17,368,309	11,148,695
Dilutive Securities				
Common stock warrants	—	—	15,691	—
Weighted average number of common stock shares outstanding — diluted	<u>21,674,742</u>	<u>13,468,081</u>	<u>17,384,000</u>	<u>11,148,695</u>
Net loss per share — basic:	<u>\$ (0.27)</u>	<u>\$ (0.44)</u>	<u>\$ (0.55)</u>	<u>\$ (1.72)</u>
Net loss per share — diluted:	<u>\$ (0.27)</u>	<u>\$ (0.44)</u>	<u>\$ (0.58)</u>	<u>\$ (1.72)</u>

The following table shows the total outstanding securities considered anti-dilutive and therefore excluded from the computation of diluted net loss per share (in thousands).

	Three Months September 30,		Nine Months September 30,	
	2015	2014	2015	2014
	(unaudited)		(unaudited)	
Warrants for common stock	1,667	1,787	1,492	1,787
Common stock options	1,785	992	1,785	992
Incentive awards	245	248	245	248
	<u>3,697</u>	<u>3,027</u>	<u>3,522</u>	<u>3,027</u>

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3. Certain Balance Sheet Items

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

	September 30, 2015 <u>(unaudited)</u>	December 31, 2014
Office and computer equipment	\$ 176	\$ 176
Purchased software	46	46
Furniture and fixtures	33	33
Leasehold improvements	66	66
Total	321	321
Less accumulated depreciation and amortization	(252)	(235)
Property and equipment, net	<u>\$ 69</u>	<u>\$ 86</u>

Accrued liabilities consist of the following (in thousands):

	September 30, 2015 <u>(unaudited)</u>	December 31, 2014
Accrued compensation	\$ 1,205	\$ 1,504
Accrued pre-clinical and clinical trial expenses	2,365	1,732
Accrued professional fees	415	73
Other accruals	32	79
Total accrued liabilities	<u>\$ 4,017</u>	<u>\$ 3,388</u>

4. Common Stock Warrants

During the three and nine months ended September 30, 2015, the Company issued an aggregate of none and 132,295 shares of common stock, respectively, to stockholders upon the exercise of warrants exercisable for shares of the Company's common stock. The 132,295 shares of common stock issued in the nine months ended September 30, 2015, were issued pursuant to both cash and net exercise provisions as provided in the warrants. Specifically, 74,136 shares of the Company's common stock were issued in exchange for \$0.4 million in cash and 58,159 shares of the Company's common stock were issued in exchange for shares of its common stock in accordance with net exercise provisions. For each warrant exercised, the Company determined the warrant's exercise date fair value and reclassified the fair value of such settled warrants from the warrant liability to additional paid-in capital, a component of stockholder's equity. The aggregate amount of these fair value reclassifications totaled none and \$1.5 million during the three and nine months ended September 30, 2015, respectively.

In August 2015, in connection with the Company's 2015 term loan facility financing described in Note 6, the Company issued ten year warrants to purchase 114,436 shares of common stock at an exercise price of \$2.84 per share. In January 2014, the Company completed the sale of common stock for aggregate proceeds of \$3.0 million and as part of this transaction, the Company issued five-year warrants to purchase 120,800 shares of common stock at an exercise price of \$5.75 per share. Due to certain provisions outside of the Company's control, the Company is required to account for the warrants issued as a liability at fair value. In addition, the estimated liability related to the warrants is required to be revalued at each reporting period until the earlier of the exercise of the warrants, at which time the liability will be reclassified to stockholders' equity, or expiration of the warrants. The issuance date fair value of the August 2015 and January 2014 warrants was \$0.3 million and \$0.4 million, respectively.

5. Collaboration and License Agreements

In June 2006, the Company entered into an exclusive worldwide, royalty-bearing license to MBX-8025 and certain other PPARd compounds (the "PPARd Products") with Janssen Pharmaceutical NV, with the right to grant sublicenses to third parties to make, use and sell such PPARd Products. Under the terms of the agreement, the Company has full control and responsibility over the research, development and registration of any PPARd Products and is required to use diligent efforts to conduct all such activities. Janssen has the sole responsibility for the preparation, filing, prosecution, maintenance of, and defense of the patents with respect to, the PPARd Products. Janssen has a right of first negotiation under the agreement to license a particular PPARd Product from the Company in the event that the Company elects to seek a third party corporate partner for the research, development, promotion, and/or commercialization of such PPARd Products. Under the terms of the agreement Janssen is entitled to receive up to an 8% royalty on net sales of PPARd Products. No payments were made and no royalties were received under this agreement during the three and nine months ended September 30, 2015 and 2014.

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In June 2010, the Company entered into two development and license agreements with Janssen Pharmaceuticals, Inc. (Janssen), a subsidiary of Johnson and Johnson, to further develop and discover undisclosed metabolic disease target agonists for the treatment of T2DM and other disorders and received a one-time nonrefundable technology access fee related to the agreements. The Company is also eligible to receive up to \$228 million in contingent payments if certain development and commercial events are achieved as well as royalties on worldwide net sales of products. No such payments have been made to date. Under the terms of the agreements, Janssen has full control and responsibility over the research, development and registration of any products developed and/or discovered from the metabolic disease targets and is required to use diligent efforts to conduct all such activities. The Company received a termination notice from Janssen, effectively ending these development and licensing agreements in early April 2015.

In June 1998, the Company entered into a license agreement with DiaTex, Inc. (DiaTex) relating to products containing halofenate, its enantiomers, derivatives, and analogs (the licensed products). The license agreement provides that DiaTex and the Company are joint owners of all of the patents and patent applications covering the licensed products and methods of producing or using such compounds, as well as certain other know-how (the covered IP). As part of the license agreement, the Company received an exclusive worldwide license, including as to DiaTex, to use the covered IP to develop and commercialize the licensed products. The Company also retained the right to sub-license the covered IP. The license agreement contains a \$2,000 per month license fee as well as a requirement to make additional payments for development achievements and royalty payments on any sales of licensed products. Pursuant to the license agreement, all of the Company's patents and patent applications related to arhalofenate, its use, and production are jointly owned with DiaTex. DiaTex is entitled to up to \$0.8 million for the future development of arhalofenate, as well as royalty payments on any sales of products containing arhalofenate. No development payments were made in the three and nine months ended September 30, 2015 and 2014 and no royalties have been paid to date.

6. Term Loan Facilities

2013 Term Loan Facility

On September 30, 2013, the Company entered into a facility loan agreement with Silicon Valley Bank and Oxford Finance (referred to herein as the lenders) for a total loan amount of \$10.0 million of which the first tranche of \$5.0 million was drawn as part of the Company's September 2013 financing. The loan had a fixed interest rate of 8.75% payable as interest only for twelve months and a thirty-six month loan amortization period thereafter, with a final interest payment of \$0.3 million at the end of the loan period. The second tranche of \$5.0 million became available to the Company upon its February 24, 2015 announcement of the achievement of positive Phase 2b data for the Company's product candidate arhalofenate and remained available to the Company until June 30, 2015. Loans under the second tranche incurred interest at a rate fixed at the time of borrowing equal to the greater of (i) 8.75% per annum and (ii) the sum of the Wall Street Journal prime rate plus 4.25% per annum. On June 30, 2015, the second tranche portion of the loan facility expired unused by the Company.

At the time the first \$5 million tranche of the facility loan was drawn down, the Company issued warrants exercisable for a total of 121,739 shares of the Company's common stock to the lenders at an exercise price of \$5.00 per share. Upon issuance, the fair value of a warrant liability was recorded in the accompanying condensed balance sheets and must be revalued at each balance sheet date until the warrants are exercised or expire.

2015 Term Loan Facility

On August 7, 2015, the Company entered into a Loan and Security Agreement pursuant to which it refinanced its existing term loan facility with Oxford Finance LLC and Silicon Valley Bank, for an aggregate amount of up to \$15 million. The first \$10 million tranche of this new loan facility was made available to the Company immediately upon the closing and was used in part to retire all \$4.1 million of the Company's existing debt outstanding under the 2013 Term Loan Facility, and to settle accrued interest and closing costs with the lenders. The remaining \$5 million, referred to as the second tranche, will be made available to the Company until March 31, 2016, for draw down upon the announcement of a qualified out-license or co-development arrangement for arhalofenate, the Company's gout therapy drug candidate, which includes an upfront payment of not less than \$35.0 million (the "second draw milestone").

The first loan tranche bears interest at 8.77%, a rate which was determined on the advance date as being the greater of (i) 8.75% and (ii) the sum of 8.47% and the 90 day U.S. LIBOR rate reported in the Wall Street Journal three business days prior to the funding date of the first tranche. Under the first tranche, the Company is required to make 12 monthly interest only payments after the funding date followed by a repayment schedule equal to 36 equal monthly payments of interest and principal. If drawn, the second tranche will bear interest using the same rate formula as the first tranche and will amortize pursuant to a repayment schedule that is coterminous with the amortization period of the first tranche. Upon maturity of each tranche, the remaining balance of such tranche and a final payment equal to 6.50% of the original principal amount advanced of the applicable tranche are payable.

The Company is permitted to make voluntary prepayments of the term loans with a prepayment fee equal to 3% of the principal amount of any term loans prepaid. The Company is required to make mandatory prepayments of the outstanding term loans upon the acceleration by the lenders of such loans following the occurrence of an event of default, along with a payment of the final payment, the prepayment fee and any all other obligations that are due and payable at the time of the prepayment.

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The Company's obligations under the term loan facility are secured, subject to customary permitted liens and other agreed upon exceptions, by a perfected first priority interest in all of the Company's tangible and intangible assets, excluding its intellectual property. The Company also entered into a negative pledge agreement with the lenders pursuant to which it has agreed not to encumber any of its intellectual property.

The term loan facility contains customary representations and warranties and customary affirmative and negative covenants applicable to the Company, including, among other things, restrictions on dispositions, changes in business, management, ownership or business locations, mergers or acquisitions, indebtedness, encumbrances, distributions, investments, transactions with affiliates and subordinated debt. The term loan facility also includes customary events of default, including but not limited to the nonpayment of principal or interest, violations of covenants, material adverse change, attachment, levy, restraint on business, bankruptcy, material judgments and misrepresentations. Upon an event of default, the lenders may, among other things, accelerate the loans and foreclose on the collateral. As of September 30, 2015, the Company was in compliance with the terms of the term loan covenants and there were no identified events of default.

At the closing, the Company also agreed to pay a facility fee of 1.00% of the term loan facility commitment. In addition, the Company issued warrants exercisable for a total of 114,436 shares of its common stock to the lenders at an exercise price of \$2.84 per share, and with a term of ten years. Upon issuance, the fair value of a warrant liability of \$0.3 million was recorded in the accompanying condensed balance sheets and will be revalued at each balance sheet date until the warrants are exercised or expire.

The Company evaluated the 2015 term loan facility in accordance with accounting guidance for derivatives and determined there was de minimus value to certain identified derivative features at issuance and at the subsequent reporting period September 30, 2015. The Company will continue to monitor and evaluate the value of these derivatives in future reporting periods and the need to recognize them in the financial statements.

7. Commitments and Contingencies

On November 8, 2013, the Company entered into a new lease commencing January 16, 2014, and expiring on December 31, 2018, for 8,894 square feet of office space in Newark, California. Rent expense was \$0.1 million and \$0.2 million for the three and nine months ended September 30, 2015 and 2014, respectively.

Future minimum lease payments are as follows (in thousands):

	Lease Payments
Year ending December 31:	
2015 (from October to December)	52
2016	216
2017	222
2018	228
Total future minimum payments	<u>\$ 718</u>

Indemnification

In the normal course of business, the Company enters into contracts and agreements that contain a variety of representations and warranties and provide for general indemnification, including indemnification associated with product liability or infringement of intellectual property rights. The Company's exposure under these agreements is unknown because it involves future claims that may be made against the Company that may be, but have not yet been, made. To date, the Company has not paid any claims or been required to defend any action related to these indemnification obligations, and no amounts have been accrued in the accompanying balance sheets related to these indemnification obligations.

The Company has agreed to indemnify its executive officers and directors for losses and costs incurred in connection with certain events or occurrences, including advancing money to cover certain costs, subject to certain limitations. The maximum potential amount of future payments the Company could be required to make under this indemnification is unlimited; however, the Company maintains insurance policies that may limit its exposure and may enable it to recover a portion of any future amounts paid. Assuming the applicability of coverage, the willingness of the insurer to assume coverage, and subject to certain retention, loss limits, and other policy provisions, the Company believes the fair value of these indemnification obligations is not material. Accordingly, the Company has not recognized any liabilities relating to these obligations as of September 30, 2015 and December 31, 2014. No assurances can be given that the covering insurers will not attempt to dispute the validity, applicability, or amount of coverage without expensive litigation against these insurers, in which case the Company may incur substantial liabilities as a result of these indemnification obligations.

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8. Stockholders' Equity

The Company is authorized to issue 100,000,000 shares of common stock with a par value of \$0.0001 per share as of September 30, 2015.

In July 2015, the Company issued 8,188,000 shares of its common stock at \$2.81 per share in an underwritten public offering. Net proceeds to the Company in connection with this offering were approximately \$21.1 million after deducting underwriting discounts, commissions and other offering expenses.

As of September 30, 2015 and December 31, 2014, the Company had reserved shares of authorized but unissued common stock as follows:

	<u>September 30,</u> <u>2015</u>	<u>December 31,</u> <u>2014</u>
	<u>(unaudited)</u>	
Common stock warrants	1,667,398	1,768,347
Equity incentive plans	2,284,421	1,549,616
Total reserved shares of common stock	<u>3,951,819</u>	<u>3,317,963</u>

9. Stock Plans and Stock-Based Compensation

Stock Plans

On January 1, 2015, the share reserve of the Company's 2013 Equity Incentive Plan, or 2013 Plan, automatically increased by 734,805 shares. From plan inception through September 30, 2015, the Company had granted options for an aggregate of 1,754,350 shares of the Company's common stock under the 2013 Plan.

Stock-Based Compensation Expense

Employee and Director Expense

Employee and director stock-based compensation expense recorded was as follows (in thousands):

	<u>Three Months Ended</u> <u>September 30,</u>		<u>Nine Months Ended</u> <u>September 30,</u>	
	<u>2015</u>	<u>2014</u>	<u>2015</u>	<u>2014</u>
	<u>(unaudited)</u>		<u>(unaudited)</u>	
Research and development	\$ 213	\$ 73	\$ 607	\$ 251
General and administrative	349	152	1,245	761
Total	<u>\$ 562</u>	<u>\$ 225</u>	<u>\$ 1,852</u>	<u>\$ 1,012</u>

10. Related-Party Transactions

The Company paid a former member of its Board of Directors, who is also a key scientific and clinical advisor to the Company, a total of \$60,000 in the year ended December 31, 2014 and \$45,000 for the nine months ended September 30, 2015, in monthly cash retainers. The Company also issued options to purchase shares of common stock and incentive awards to this individual in his capacity as a key scientific and clinical advisor.

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

Operating results for the three and nine months ended September 30, 2015, are not necessarily indicative of results that may occur in future interim periods or for the full fiscal year.

This Quarterly Report on Form 10-Q contains statements indicating expectations about future performance and other forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, that involve risks and uncertainties. We usually use words such as “may,” “will,” “should,” “could,” “expect,” “plan,” “anticipate,” “believe,” “estimate,” “predict,” “intend,” or the negative of these terms or similar expressions to identify these forward-looking statements. These statements appear throughout this Quarterly Report on Form 10-Q and are statements regarding our current expectation, belief or intent, primarily with respect to our operations and related industry developments. Examples of these statements include, but are not limited to, statements regarding the following: our business and scientific strategies; the progress of our and our collaborators’ product development programs, including clinical testing, and the timing of results thereof; our corporate collaborations and revenues that may be received from our collaborations and the timing of those potential payments; our expectations with respect to regulatory submissions and approvals; our drug discovery technologies; our research and development expenses; protection of our intellectual property; sufficiency of our cash and capital resources and the need for additional capital; and our operations and legal risks. You should not place undue reliance on these forward-looking statements. Our actual results could differ materially from those anticipated in these forward-looking statements for many reasons, including as a result of the risks and uncertainties discussed under the heading “Risk Factors” in Item 1A of Part II of this Quarterly Report on Form 10-Q. Any forward-looking statement speaks only as of the date on which it is made, and we undertake no obligation to update any forward-looking statement to reflect events or circumstances after the date on which the statement is made or to reflect the occurrence of unanticipated events. New factors emerge from time to time, and it is not possible for us to predict which factors will arise. In addition, we cannot assess the impact of each factor 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.

Overview

CymaBay Therapeutics, Inc. is focused on developing therapies to treat metabolic diseases with high unmet medical need, including serious rare and orphan disorders. Arhalofenate, our lead product candidate, is being developed for the treatment of gout, the most common form of inflammatory arthritis. Arhalofenate has successfully completed five Phase 2 clinical trials in patients with gout and consistently demonstrated the ability to reduce gout flares and reduce serum uric acid (sUA). Gout flares are recurring and painful episodes of joint inflammation that are triggered by the presence of monosodium urate crystals that form as a result of elevated sUA levels. We believe the potential for arhalofenate to prevent or reduce flares while also lowering sUA could differentiate it from currently available treatments for gout and classify it as the first potential drug in what we believe could be a new class of gout therapy referred to as Urate Lowering Anti-Flare Therapy (ULAFT). Arhalofenate has established a favorable safety profile in clinical trials involving over 1,100 patients exposed to date. We held an end of phase 2 meeting with the FDA in the third quarter of 2015 to review the results of our clinical studies and to discuss the proposed design of a phase 3 program for arhalofenate.

Our second product candidate, MBX-8025, demonstrated favorable effects on cholesterol, triglycerides and markers of liver health in a Phase 2 clinical trial in patients with mixed dyslipidemia. We are currently conducting an open-label Phase 2 pilot study of MBX-8025 in approximately 13 patients with homozygous familial hypercholesterolemia (HoFH) that we expect to be completed in the first quarter of 2016. We have also initiated a double-blind, placebo-controlled Phase 2 study of MBX-8025 in patients with primary biliary cholangitis (PBC), formerly referred to as primary biliary cirrhosis. In this study, approximately 75 patients with PBC who have had an inadequate response to ursodiol will be enrolled and randomized to receive either placebo or MBX-8025 (either 50 mg or 200 mg) for 12 weeks. The primary endpoint will be the change in alkaline phosphatase and is expected to include patients from the U.S., U.K., Canada, Germany and Poland. We expect this study to be completed by the end of 2016. We also believe that MBX-8025 could have utility in the treatment of severe hypertriglyceridemia (SHTG) and the more prevalent, but high unmet need, indication of nonalcoholic steatohepatitis (NASH). We have obtained orphan-drug designations for MBX-8025 in both HoFH and SHTG (Frederickson type I or V hyperlipoproteinemia).

We are an emerging growth company. Under the JOBS Act emerging growth companies can delay adopting new or revised accounting standards until such time of those standards apply to private companies. We have adopted this exemption from new or revised accounting standards, and therefore, we may not be subject to the same new or revised accounting standards as other public companies that are not “emerging growth companies.”

[Table of Contents](#)**Critical Accounting Policies and Use of Estimates**

Our management's discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported revenues and expenses during the reporting periods. We base our estimates on historical experience and on various other factors that we believe to be materially reasonable under the circumstances and review our estimates on an ongoing basis. We consider certain accounting policies including, but not limited to, research and development expenses and clinical accruals, stock-based compensation and valuation of warrant liabilities to be critical policies. Actual results may materially differ from these estimates under different assumptions or conditions. There have been no significant changes in our critical accounting estimates during the nine months ended September 30, 2015, as compared with those previously disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2014, filed with the SEC on March 23, 2015.

Results of Operations**General**

To date, we have not generated any income from operations. As of September 30, 2015, we had an accumulated deficit of \$390.3 million, primarily as a result of expenditures for research and development and general and administrative expenses from inception to date. While we may in the future generate revenue from a variety of sources, including product sales, royalties and license fees and milestone payments in connection with strategic partnerships, our product candidates are still under clinical development and may never be successfully developed or commercialized. Accordingly, we expect to continue to incur substantial losses from operations for the foreseeable future and there can be no assurance that we will ever generate significant revenue to achieve and sustain profitability.

	Three Months Ended			Nine Months Ended		
	September 30,		Variance	September 30,		Variance
	2015	2014		2015	2014	
<i>(\$ in thousands)</i>						
Operating expenses:						
Research and development	\$ 4,528	\$ 3,848	\$ 680	\$ 12,975	\$ 10,546	\$ 2,429
General and administrative	2,201	1,687	514	7,075	5,853	1,222
Loss from operations	(6,729)	(5,535)	(1,194)	(20,050)	(16,399)	(3,651)
Interest expense, net	(219)	(172)	(47)	(485)	(517)	32
Other income (expense), net	1,083	(254)	1,337	10,985	(2,279)	13,264
Net loss	<u>\$ (5,865)</u>	<u>\$ (5,961)</u>	<u>\$ 96</u>	<u>\$ (9,550)</u>	<u>\$ (19,195)</u>	<u>\$ 9,645</u>

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Research & Development Expenses

Conducting research and development is central to our business model. For the three months ended September 30, 2015 and 2014, research and development expenses were \$4.5 million and \$3.8 million, respectively. For the nine months ended September 30, 2015 and 2014, research and development expenses were \$13.0 million and \$10.5 million, respectively. Research and development expenses are detailed in the table below:

(\$ in thousands)	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2015	2014	2015	2014
	(unaudited)		(unaudited)	
Arhalofenate Gout — Phase 2b Randomized Study	\$ 105	\$ 1,974	\$ 1,357	\$ 6,096
Arhalofenate Gout — Febuxostat Combo Study	—	347	177	376
Arhalofenate Gout — Drug manufacturing	940	504	2,653	981
Arhalofenate Gout — Three Phase 2 Studies	—	(1)	—	(90)
MBX-8025	2,174	118	4,563	225
Other Projects	5	11	39	27
Total Project Costs	3,224	2,953	8,789	7,615
Internal Research and Development Costs	1,304	895	4,186	2,931
Total Research and Development	\$ 4,528	\$ 3,848	\$12,975	\$10,546

Our external research and development costs consist primarily of:

- expenses incurred under agreements with contract research organizations, investigative sites and consultants that conduct our clinical trials and a substantial portion of our preclinical activities;
- the cost of acquiring and manufacturing clinical trial and other materials; and
- other costs associated with development activities, including additional studies

Internal research and development costs consist primarily of salaries and related fringe benefits costs for our employees (such as workers compensation and health insurance premiums), stock-based compensation charges, travel costs, lab supplies and overhead expenses. Internal costs generally benefit multiple projects and are not separately tracked per project.

Total project costs increased by \$0.3 million during the three months ended September 30, 2015 as compared to the three months ended September 30, 2014, primarily due to increases in drug manufacturing costs related to registration batch production and other manufacturing process development activities for arhalofenate as well as costs incurred for toxicology studies and clinical trial development activities associated with MBX-8025. These increases were partially offset by a decrease in clinical development costs of arhalofenate as our Phase 2b gout clinical trial was substantially completed in the second quarter of 2015. Internal research and development cost increased by \$0.4 million for the three months ended September 30, 2015 as compared to the three months ended September 30, 2014 due to increased employee compensation expenses incurred in 2015 primarily to support the expansion of our clinical development activities.

Total project costs increased by \$1.2 million during the nine months ended September 30, 2015 as compared to the nine months ended September 30, 2014, primarily due to increases in drug manufacturing costs related to registration batch production and other manufacturing process development activities for arhalofenate as well as costs incurred for toxicology studies and clinical trial development activities associated with MBX-8025. These increased expenses were offset in part by a decrease in clinical development costs of arhalofenate as our Phase 2b gout clinical trial was substantially completed in the second quarter of 2015. Internal research and development cost increased by \$1.3 million for the nine months ended September 30, 2015 as compared to the nine months ended September 30, 2014 due to increased employee compensation expenses incurred in 2015 primarily to support the expansion of our clinical development activities.

We expect to continue to incur substantial expenses related to our development activities for the foreseeable future as we continue product development for arhalofenate and MBX-8025. Since product candidates in later stages of clinical development generally have higher development costs than those in earlier stages of clinical development, primarily due to the increased size and

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duration of later stage clinical trials, we expect that our research and development expenses will increase in the future. In addition, if our product development efforts are successful, we expect to incur substantial costs to prepare for potential Phase 3 clinical trials and activities.

General and Administrative Expenses

General and administrative expenses consist principally of personnel-related costs, professional fees for legal, consulting, audit services, and other general operating expenses not otherwise included in research and development.

General and administrative expenses increased \$0.5 million for the three months ended September 30, 2015 as compared to the three months ended September 30, 2014. General and administrative expenses increased \$1.2 million for the nine months ended September 30, 2015 as compared to the nine months ended September 30, 2014. These cost increases were primarily due to higher stock-based compensation and consulting expenses. For the next several quarters, we anticipate general and administrative expenses will remain relatively consistent with current levels, given that we have completed a substantial portion of the effort required to expand our infrastructure and we have secured the professional services necessary to support us as a public reporting company under the Exchange Act.

Other Income (Expense), Net

Other income (expense), net for the three months ended September 30, 2015 reflected a gain of \$1.1 million and for the three months ended September 30, 2014 reflected a loss of \$0.3 million, in each case due to the remeasurement of our warrant liabilities at fair value. We use an option pricing model to value our warrants at each reporting date and the warrant valuations changed primarily due to variations in the price of our common stock which is an input to our valuation model. Specifically, during the three months ended September 30, 2015, the gain recognized was due primarily to a decrease in the value of our common stock from \$2.69 at June 30, 2015 to \$1.94 at September 30, 2015. During the three months ended September 30, 2014, the loss recognized was due primarily to an increase in the value of our common stock from \$6.50 at June 30, 2014, to \$6.84 at September 30, 2014.

Other income (expense), net for the nine months ended September 30, 2015 reflected a gain of \$11.0 million and for the nine months ended September 30, 2014 reflected a loss of \$2.3 million, in each case due to the remeasurement of our warrant liabilities at fair value. Specifically, during the nine months ended September 30, 2015, the gain recognized was due primarily to a decrease in the value of our common stock from \$9.83 at December 31, 2014 to \$1.94 at September 30, 2015. During the nine months ended September 30, 2014, the loss recognized was due primarily to an increase in the value of our common stock from \$5.00 at December 31, 2013, to \$6.84 at September 30, 2014.

Liquidity and Capital Resources

Through September 30, 2015, we have funded our operations through the sale of equity securities, licensing fees, issuance of debt and collaborations with third parties. At September 30, 2015, we had cash, cash equivalents and marketable securities of \$46.9 million, primarily as a result of proceeds received in a series of equity and debt transactions which are described further below.

Equity Transactions

On July 25, 2014, we completed a public offering of 4.6 million shares of our common stock at \$5.50 per share which we refer to as our 2014 public offering. Net proceeds to us in connection with the 2014 public offering, were approximately \$23.0 million after deducting underwriting discounts, commissions and offering expenses.

On November 7, 2014, we filed a \$100 million shelf registration statement on Form S-3 with the SEC and also entered into an at-the-market facility to sell up to \$25 million of common stock under the registration statement. In January and February 2015, we sold additional shares of our common stock under this facility for net proceeds to us of \$4.3 million.

On July 27, 2015, pursuant to our shelf registration statement on Form S-3, we completed the issuance of 8,188,000 shares of our common stock at \$2.81 per share in an underwritten public offering. Net proceeds to us in connection with this offering were approximately \$21.1 million after deducting underwriting discounts, commissions and other offering expenses.

2013 Term Loan Facility

The venture debt financing which was part of the 2013 financing was provided to us pursuant to a term loan facility with Silicon Valley Bank and Oxford Finance LLC, collectively referred to as the lenders, for an aggregate amount of \$10 million, the first \$5 million tranche of which was made available to us as of September 30, 2013 bearing interest at a rate equal to 8.75% per annum. The remaining \$5 million, referred to as the second tranche, became available to us for draw down upon our February 24, 2015, announcement of the achievement of positive Phase 2b study data and remained available to us until June 30, 2015. We did not draw down on the \$5 million second tranche before that portion of the loan facility expired on June 30, 2015.

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2015 Term Loan Facility

On August 7, 2015, we entered into a new Loan and Security Agreement pursuant to which we refinanced our 2013 term loan facility with Oxford Finance LLC and Silicon Valley Bank, collectively referred to as the lenders, for an aggregate amount of up to \$15 million, which we refer to as the 2015 term loan facility. The first \$10 million tranche of this new loan facility was made available to us immediately upon the closing and was used in part to retire all \$4.1 million of our existing term loan debt outstanding on the closing date, and to settle closing costs with the lenders. The remaining \$5 million, referred to as the second tranche, will be made available to us until March 31, 2016, for draw down upon the announcement of a qualified out-license or co-development arrangement for arhalofenate, our gout therapy drug candidate, which includes an upfront payment of not less than \$35,000,000 (the “second draw milestone”).

The first loan tranche bears interest at 8.77%, a rate determined on the advance date as being the greater of (i) 8.75% and (ii) the sum of 8.47% and the 90 day U.S. LIBOR rate reported in the Wall Street Journal three business days prior to the funding date of the first tranche. Under the first tranche, we are required to make 12 monthly interest only payments after the funding date followed by a repayment schedule equal to 36 equal monthly payments of interest and principal. If drawn, the second tranche will bear interest using the same rate formula as the first tranche and will amortize pursuant to a repayment schedule that is coterminous with the amortization period of the first tranche. Upon maturity of each tranche, the remaining balance of such tranche and a final payment equal to 6.50% of the original principal amount advanced of the applicable tranche are payable.

We are permitted to make voluntary prepayments of the term loans with a prepayment fee equal to 3% of the principal amount of any term loans prepaid. We are required to make mandatory prepayments of the outstanding term loans upon the acceleration by the lenders of such loans following the occurrence of an event of default, along with a payment of the final payment, the prepayment fee and any all other obligations that are due and payable at the time of the prepayment.

Our obligations under the term loan facility are secured, subject to customary permitted liens and other agreed upon exceptions, by a perfected first priority interest in all of our tangible and intangible assets, excluding our intellectual property. We also entered into a negative pledge agreement with the lenders pursuant to which we have agreed not to encumber any of our intellectual property.

The term loan facility contains customary representations and warranties and customary affirmative and negative covenants applicable to us, including, among other things, restrictions on dispositions, changes in business, management, ownership or business locations, mergers or acquisitions, indebtedness, encumbrances, distributions, investments, transactions with affiliates and subordinated debt. The representations and warranties contained in the loan facility were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to such agreement to allocate risk and may be subject to limitations agreed upon by the parties; accordingly, they should not be relied upon by investors as to assertions of factual matters. The term loan facility also includes customary events of default, including but not limited to the nonpayment of principal or interest, violations of covenants, material adverse change, attachment, levy, restraint on business, bankruptcy, material judgments and misrepresentations. Upon an event of default, the lenders may, among other things, accelerate the loans and foreclose on the collateral. As of September 30, 2015, we were in compliance with the terms of the term loan covenants and there were no identified events of default.

At the closing, we also agreed to pay a facility fee of 1.00% of the 2015 term loan facility commitment. In addition, we issued warrants exercisable for a total of 114,436 shares of our common stock to the lenders at an exercise price of \$2.84 per share, and with a term of ten years.

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Cash Flows

The following table sets forth a summary of the net cash flow activity for each of the periods indicated below (in thousands):

	Nine Months Ended	
	September 30,	
	2015	2014
Net cash used in operating activities	\$(18,128)	\$(13,642)
Net cash used in investing activities	(17,294)	(19,836)
Net cash provided by financing activities	30,527	25,433
Net decrease in cash and cash equivalents	<u>\$ (4,895)</u>	<u>\$ (8,045)</u>

Operating Activities: Net cash used in operating activities for the nine months ended September 30, 2015 was \$18.1 million primarily due to a net loss of \$9.6 million resulting from ongoing drug development activities, adjusted for an \$11.0 million noncash gain recorded to revalue our warrant liability, a \$1.9 million charge for stock-based compensation, and other changes in working capital.

Investing Activities: Net cash used by investing activities was \$17.3 million for the nine months ended September 30, 2015, due to net purchases of marketable securities.

Financing Activities: Cash provided by financing activities was \$30.5 million for the nine months ended September 30, 2015, primarily as a result of \$4.3 million in net proceeds received from sales of our common stock in January and February 2015 pursuant to a \$25 million at-the-market facility, \$21.1 million in net proceeds received from a public offering of our common stock in July 2015, and \$9.5 million in net proceeds from our 2015 term loan facility negotiated in August 2015, offset in part primarily by \$4.8 million in principal repayments on our 2013 term loan facility.

Capital Requirements

As of September 30, 2015, our cash, cash equivalents and marketable securities totaled \$46.9 million. These funds will satisfy our liquidity requirements through at least the end of the fourth quarter of 2016. We expect to incur substantial expenditures in the future for the development and potential commercialization of our product candidates. Because of this, we expect our future liquidity and capital resource needs will be impacted by numerous factors, including but not limited to, the timing of initiation of planned clinical trials, including phase 2 trials to study the therapeutic benefits of MBX-8025 on patients with certain orphan diseases as well as a phase 3 clinical trial to study the therapeutic benefits of arhalofenate on patients with gout. We will therefore continue to require additional financing to develop our products and fund future operating losses and will seek funds through equity financings, debt, collaborative or other arrangements with corporate sources, or through other sources of financing. It is unclear if or when any such financing transactions will occur, on satisfactory terms or at all. Our failure to raise capital as and when needed could have a negative impact on our financial condition and our ability to pursue our business strategies. If adequate funds are not available to us, we may be required to reduce our development activities or to close our business.

Contractual Obligations and Commitments

Consistent with our disclosures in our Annual Report on Form 10-K for the year ended December 31, 2014 as filed with the SEC on March 23, 2015, we continue to rely on contract research organizations and other research support providers to perform clinical and preclinical studies for us and we contract with firms to supply our drug compounds for use in our development activities. As of September 30, 2015, under the terms of our agreements with these organizations, we are obligated to make future payments as services are provided. These agreements are terminable by us upon written notice. Generally, we are only liable for actual effort expended or cost incurred by the organizations at any point in time during the contract period through the notice period. Other than a \$6.2 million contract research organization agreement executed in September 2015, there have been no significant changes to our aggregate contractual obligations as compared to the disclosures in our Annual Report on Form 10-K for the year ended December 31, 2014.

Off-Balance Sheet Arrangements

We do not currently have, nor have we ever had, any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. In addition, we do not engage in trading activities involving non-exchange traded contracts.

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Item 3. Quantitative and Qualitative Disclosures About Market Risk

This item is not applicable to us as a smaller reporting company.

Item 4. Controls and Procedures

- (a) *Evaluation of Disclosure Controls and Procedures.* Based on the evaluation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), our chief executive officer and chief financial officer have concluded that, as of the end of the period covered by this report, our disclosure controls and procedures were effective.
- (b) *Limitations on the Effectiveness of Controls.* A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the controls are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues, if any, within a company have been detected. Accordingly, our disclosure controls and procedures are designed to provide reasonable, not absolute, assurance that the objectives of our disclosure control system are met and, as set forth above, our chief executive officer and chief financial officer have concluded, based on their evaluation as of the end of the period covered by this report, that our disclosure controls and procedures were sufficiently effective to provide reasonable assurance that the objectives of our disclosure control system were met.
- (c) *Changes in Internal Controls.* There were no changes in our internal control over financial reporting that occurred during the quarter ended September 30, 2015, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1A. Risk Factors

In evaluating our business, you should carefully consider the following risks, as well as the other information contained in this Quarterly Report on Form 10-Q. These risk factors could cause our actual results to differ materially from those contained in forward-looking statements we have made in this Quarterly Report on Form 10-Q and those we may make from time to time. If any of the following risks actually occurs, our business, financial condition and operating results could be harmed. The risks and uncertainties described below are not the only ones facing us. Additional risks and uncertainties not presently known to us, or that we currently see as immaterial, may also harm our business. The risks facing our business have not changed substantively from those discussed in our Annual Report on Form 10-K for the year ended December 31, 2014, except for those risk factors below designated by an asterisk ().*

Risks Related to Our Financial Condition and Capital Requirements

We will need additional capital in the future to sufficiently fund our operations and research. *

We have consumed substantial amounts of capital to date as we continue our research and development activities. As of September 30, 2015, we had cash, cash equivalents and marketable securities of approximately \$46.9 million. We believe that these funds, which were obtained through recent equity and debt financings, will allow us to continue operation through at least the end of the fourth quarter of 2016. We currently believe that we will need to raise additional capital to continue our operations thereafter. Our monthly spending levels vary based on new and ongoing development and corporate activities.

Developing pharmaceutical products, including conducting preclinical studies and clinical trials, is a time-consuming, expensive and uncertain process that takes years to complete. We expect our research and development expenses to substantially increase in connection with our ongoing activities, particularly as we advance development of our lead clinical product candidate, arhalofenate, for the prevention of gout flares and the treatment of hyperuricemia in patients with gout.

In the event we do not successfully raise sufficient funds in financing our product development activities, particularly related to the ongoing development of arhalofenate and development of MBX-8025, it will be necessary to curtail our product development activities commensurate with the magnitude of the shortfall or our product development activities may cease altogether. To the extent that the costs of the ongoing development of arhalofenate exceed our current estimates and we are unable to raise sufficient additional capital to cover such additional costs, we will need to reduce operating expenses, enter into a collaboration or other similar arrangement with respect to development and/or commercialization rights to arhalofenate, outlicense intellectual property rights to arhalofenate, sell assets or effect a combination of the above. No assurance can be given that we will be able to effect any of such transactions on acceptable terms, if at all. Failure to progress the development of arhalofenate and MBX-8025 will have a negative effect on our business, future prospects and ability to obtain further financing on acceptable terms (if at all).

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Beyond the plan of operations outlined above, our future funding requirements and sources will depend on many factors, including but not limited to the following:

- the rate of progress and cost of our clinical studies, including in particular the Phase 3 studies of arhalofenate and planned proof-of-concept studies of MBX-8025;
- the need for additional or expanded clinical studies;
- the rate of progress and cost of our Chemistry, Manufacturing and Control development, registration and validation program;
- the timing, economic and other terms of any licensing, collaboration or other similar arrangement into which we may enter;
- the costs and timing of seeking and obtaining FDA and other regulatory approvals;
- the extent of our other development activities;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights; and
- the effect of competing products and market developments.

If we are unable to raise additional capital in sufficient amounts or on terms acceptable to us, we will be prevented from pursuing development and commercialization efforts, which will have a material adverse effect on our business, operating results and prospects and on our ability to develop our product candidates.

We have incurred significant net losses in each year since our inception, including a net loss of approximately \$31.9 million for the year ended December 31, 2014, and a net loss of \$9.6 million for the nine months ended September 30, 2015. We anticipate that we will continue to incur significant losses for the foreseeable future, and we may never achieve or maintain profitability. As of September 30, 2015, we had an accumulated deficit of \$390.3 million.

To date, we have financed our operations primarily through the sale of equity securities, licensing fees, issuance of debt and collaborations with third parties. We have devoted most of our financial resources to research and development, including our preclinical development activities and clinical trials. We have not completed development of any product candidates. We expect to continue to incur significant and increasing losses and negative cash flows for the foreseeable future. The size of our losses will depend, in part, on the rate of future expenditures and our ability to generate revenues. In particular, we expect to incur substantial and increased expenses as we:

- continue the development of our lead product candidate, arhalofenate, for the prevention of flares and treatment of hyperuricemia in patients with gout;
- seek to obtain regulatory approvals for arhalofenate;
- prepare for the potential commercialization of arhalofenate;
- scale up manufacturing capabilities to commercialize arhalofenate for any indications for which we receive regulatory approval;
- begin outsourcing of the commercial manufacturing of arhalofenate for any indications for which we receive regulatory approval;
- establish an infrastructure for the sales, marketing and distribution of arhalofenate for any indications for which we receive regulatory approval;
- expand our research and development activities and advance our clinical programs, including MBX-8025;
- maintain, expand and protect our intellectual property portfolio;
- continue our research and development efforts and seek to discover additional product candidates; and
- add operational, financial and management information systems and personnel, including personnel to support our product development and commercialization efforts and operations as a public company.

We do not anticipate that we will generate revenue from the sale of our products for the foreseeable future. Our ability to become profitable depends upon our ability to generate significant continuing revenues.

In the absence of additional sources of capital, which may not be available to us on acceptable terms, or at all, the development of arhalofenate or future product candidates may be reduced in scope, delayed or terminated. If our product candidates fail in clinical studies or do not gain regulatory approval, or if our future products, if any, do not achieve market acceptance, we may never become profitable.

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Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis. 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, diversify our product offerings or continue our operations.

Our ability to generate future revenues from product sales is uncertain and depends upon our ability to successfully develop, obtain regulatory approval for, and commercialize our product candidates.

Our ability to generate revenue and achieve profitability depends on our ability, alone or with collaborators, to successfully complete the development of, obtain the necessary regulatory approvals for and commercialize our product candidates. We do not anticipate generating revenues from sales of our product candidates for the foreseeable future, if ever. Our ability to generate future revenues from product sales depends heavily on our success in:

- obtaining favorable results for and advancing the development of arhalofenate, including raising sufficient capital or partnering with a third party to successfully initiate our Phase 3 clinical development;
- obtaining United States (U.S.) and foreign regulatory approvals for arhalofenate;
- launching and commercializing arhalofenate, either on our own or with a partner, including building a sales force and collaborating with third parties;
- achieving broad market acceptance of arhalofenate in the medical community and by third-party payors and patients;
- obtaining favorable results for and advancing the development of MBX-8025; and
- generating a pipeline of product candidates.

Conducting preclinical testing and clinical trials is a time-consuming, expensive and uncertain process that takes years to complete, and we may never generate the necessary data required to obtain regulatory approval and achieve product sales. Our anticipated development costs would likely increase if we do not obtain favorable results or if development of our product candidates is delayed. In particular, we would likely incur higher costs than we currently anticipate if development of our product candidates is delayed because we are required by a regulatory authority such as the U.S. FDA to perform studies or trials in addition to those that we currently anticipate. Because of the numerous risks and uncertainties associated with pharmaceutical product development, we are unable to predict the timing or amount of any increase in our anticipated development costs.

In addition, our product candidates, if approved, may not achieve commercial success. Our commercial revenues, if any, will be derived from sales of products that we do not expect to be commercially available for several years, if at all. Even if one or more of our product candidates is approved for commercial sale, we anticipate incurring significant costs in connection with commercialization. As a result, we cannot assure you that we will be able to generate revenues from sales of any approved product candidates, or that we will achieve or maintain profitability even if we do generate sales.

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

Until such time, if ever, as we can generate substantial product revenues, we expect to finance our cash needs through a combination of equity offerings, debt financings, collaborations, strategic alliances, licensing arrangements and other marketing and distribution arrangements. We do not have any committed external source of funds.

In order to raise additional funds to support our operations, we may sell additional equity or debt securities, enter into collaborations, strategic alliances, or licensing arrangements or other marketing or distribution arrangements. To the extent that we raise additional capital through the sale of equity or convertible debt securities, ownership interests of our stockholders will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect the rights of stockholders. Debt financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures, and declaring dividends, and will impose limitations on our ability to acquire, sell or license intellectual property rights and other operating restrictions that could adversely impact our ability to conduct our business.

If we raise additional funds through collaborations, strategic alliances, or licensing arrangements or other marketing or distribution arrangements with third parties, we may have to relinquish valuable rights to our intellectual property, technologies, future revenue streams, research programs or product candidates, or grant licenses on terms that may not be favorable to us. If we are unable to expand our operations or otherwise capitalize on our business opportunities, our business, financial condition and results of operations could be materially adversely affected and we may not be able to meet our debt service obligations. If we are unable to raise additional funds through equity or debt financings when needed, we may be required to delay, limit, reduce or terminate our product development or commercialization efforts, or grant others rights to develop and market product candidates that we would otherwise prefer to develop and market ourselves.

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We are an emerging growth company and we cannot be certain if the reduced disclosure requirements applicable to emerging growth companies will make our common stock less attractive to investors.

We are an emerging growth company. Under the Jumpstart Our Business Startups Act of 2012, or the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards until such time as those standards apply to private companies. We plan to avail ourselves of this exemption from new or revised accounting standards and, therefore, we may not be subject to the same new or revised accounting standards as other public companies that are not “emerging growth companies.”

For as long as we continue to be an emerging growth company, we also intend to take advantage of certain other exemptions from various reporting requirements that are applicable to other public companies including, but not limited to, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, exemptions from the requirements of holding a nonbinding advisory stockholder vote on executive compensation and any golden parachute payments not previously approved, exemption from the requirement of auditor attestation in the assessment of our internal control over financial reporting and exemption from any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor’s report providing additional information about the audit and the financial statements (auditor discussion and analysis). If we do, the information that we provide stockholders may be different than what is available with respect to other public companies. We cannot predict if investors will find our common stock less attractive because we will rely on these exemptions. If investors find our common stock less attractive as a result of our status as an emerging growth company, there may be less liquidity for our common stock and our stock price may be more volatile.

We will remain an emerging growth company until the earliest of (i) the end of the fiscal year in which the market value of our common stock that is held by non-affiliates exceeds \$700 million as of the end of the second fiscal quarter, (ii) the end of the fiscal year in which we have total annual gross revenues of \$1 billion or more during such fiscal year, (iii) the date on which we issue more than \$1 billion in non-convertible debt in a three-year period or (iv) the end of the fiscal year following the fifth anniversary of the date of the first sale of our common stock pursuant to an effective registration statement filed under the Securities Act.

Risks Related to Clinical Development and Regulatory Approval

We depend on the success of our lead product candidate, arhalofenate and MBX-8025, which are still under clinical development and we may not obtain regulatory approval or successfully commercialize either of these product candidates. *

We have not marketed, distributed or sold any products. The success of our business depends upon our ability to develop and commercialize our lead product candidate, arhalofenate, which has completed eight Phase 1 and nine Phase 2 clinical trials, including five Phase 2 studies in gout and our second product candidate, MBX-8025, which has completed five Phase 1 and one Phase 2 clinical trials. We had an end of phase 2 meeting with the FDA in the third quarter of 2015 to review the results of our clinical studies and to discuss the proposed design of a phase 3 program for arhalofenate. There is no guarantee that our clinical trials will be completed or, if completed, will be successful. In April 2015, we initiated a pilot study for MBX-8025 in patients with homozygous familial hypercholesterolemia (HoFH) and we are moving MBX-8025 forward in a Phase 2 clinical study for patients with PBC. The success of arhalofenate and MBX-8025, respectively, will depend on several factors, including the following:

- successful enrollment and completion of clinical trials;
- recognition by the FDA and other regulatory authorities outside of the U.S. of orphan disease designation for MBX-8025 in addition to those already obtained;
- receipt of marketing approvals from the FDA and regulatory authorities outside the U.S. for our product candidate;
- establishing commercial manufacturing capabilities by making arrangements with third-party manufacturers;
- launching commercial sales of the product, whether alone or in collaboration with others;
- acceptance of the product by patients, the medical community and third-party payors;
- effectively competing with other therapies;
- a continued acceptable safety profile of the product following approval; and
- obtaining, maintaining, enforcing and defending intellectual property rights and claims.

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 arhalofenate, which would materially harm our business.

We have never obtained regulatory approval for a drug and we may be unable to obtain, or may be delayed in obtaining, regulatory approval for arhalofenate.

We have never obtained regulatory approval for a drug. In the U.S. it is possible that the FDA may refuse to accept our New Drug Application (NDA) for substantive review or may conclude after review of our data that our application is insufficient to obtain regulatory approval of arhalofenate. If the FDA does not accept or approve our NDA, it may require that we conduct additional

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clinical, nonclinical or manufacturing validation studies and submit that data before it will reconsider our application. Depending on the extent of these or any other FDA required studies, approval of any NDA or application that we submit may be delayed by several years, or may require us to expend more resources than we have available. It is also possible that additional studies, if performed and completed, may not be considered sufficient by the FDA to approve our NDA.

We currently do not know when we might commence our Phase 3 study of arhalofenate or achieve FDA approval of arhalofenate. We currently do not have the capital necessary to conduct or complete Phase 3 studies of arhalofenate and we may not be able to raise sufficient funds necessary or secure a partnership to conduct this study.

Any delay in obtaining, or an inability to obtain, regulatory approvals would prevent us from commercializing arhalofenate, generating revenues and achieving and sustaining profitability. If any of these outcomes occur, we may be forced to abandon our development efforts for arhalofenate, which would have a material adverse effect on our business and could potentially cause us to cease operations.

We depend on the successful completion of clinical trials for our product candidates, including arhalofenate. The positive clinical results obtained for our product candidates in prior clinical studies may not be repeated in future clinical studies.

Before obtaining regulatory approval for the sale of our product candidates, including arhalofenate and MBX-8025, we must conduct additional clinical trials to demonstrate the safety and efficacy of our product candidates in humans. Clinical testing is expensive, difficult to design and implement, can take many years to complete and is uncertain as to outcome. A failure of one or more of our clinical trials can occur at any stage of testing. The outcome of preclinical testing and early clinical trials may not be predictive of the success of later clinical trials, and interim results of a clinical trial do not necessarily predict final results. 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 for their products.

We have completed nine Phase 2 clinical studies of arhalofenate, including five in gout. In addition, six clinical studies with MBX-8025 and five clinical studies with MBX-2982 have been completed. However, we have never conducted a Phase 3 clinical trial. The positive results we have seen to date in our Phase 2 clinical trials of arhalofenate for gout do not ensure that later clinical trials will demonstrate similar results. Product candidates in later stages of clinical trials may fail to show the desired safety and efficacy characteristics despite having progressed satisfactorily through preclinical studies and initial clinical testing. A number of companies in the pharmaceutical and biotechnology industries, including those with greater resources and experience, have suffered significant setbacks in Phase 3 clinical development, even after seeing promising results in earlier clinical trials.

We may experience a number of unforeseen events during clinical trials for our product candidates, including arhalofenate, that could delay or prevent the commencement and/or completion of our clinical trials, including the following:

- regulators or institutional review boards may not authorize us or our investigators to commence a clinical trial or conduct a clinical trial at a prospective trial site;
- the clinical study protocol may require one or more amendments delaying study completion;
- clinical trials of our product candidates may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical trials or abandon product development programs;
- the number of subjects required for clinical trials of our product candidates may be larger than we anticipate, enrollment in these clinical trials may be insufficient or slower than we anticipate or subjects may drop out of these clinical trials at a higher rate than we anticipate;
- clinical investigators or study subjects fail to comply with clinical study protocols;
- trial conduct and data analysis errors may occur, including, but not limited to, data entry and/or labeling errors;
- our third-party contractors may fail to comply with regulatory requirements or meet their contractual obligations to us in a timely manner, or at all;
- we might have to suspend or terminate clinical trials of our product candidates for various reasons, including a finding that the subjects are being exposed to unacceptable health risks;
- regulators or institutional review boards may require that we or our investigators suspend or terminate clinical research for various reasons, including noncompliance with regulatory requirements;
- the cost of clinical trials of our product candidates may be greater than we anticipate;
- the supply or quality of our clinical trial materials or other materials necessary to conduct clinical trials of our product candidates may be insufficient or inadequate; and
- our product candidates may have undesirable side effects or other unexpected characteristics, causing us or our investigators to suspend or terminate the trials.

We expect our research and development expenses to increase in connection with our ongoing activities, particularly if we commence a Phase 3 clinical trial with arhalofenate and undertake additional clinical trials of our other product candidates MBX-8025

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and MBX-2982. Before we commence a Phase 3 clinical trial for arhalofenate, we will need to raise substantial additional capital. We also will need to raise substantial additional capital in the future to complete the development and commercialization of MBX-8025, as well as MBX-2982 for which we currently have no planned clinical trials. Because successful development of our product candidates is uncertain, we are unable to estimate the actual funds required to complete research and development and commercialize our products under development.

Negative or inconclusive results of our future clinical trials of arhalofenate, or any other clinical trial we conduct, could cause the FDA to require that we repeat or conduct additional clinical studies. Despite the results reported in earlier clinical trials for arhalofenate, we do not know whether any clinical trials we may conduct will demonstrate adequate efficacy and safety to result in regulatory approval to market our product candidates, including arhalofenate. If later stage clinical trials do not produce favorable results, our ability to obtain regulatory approval for our product candidates, including arhalofenate, may be adversely impacted.

We have never tested MBX-8025 in clinical studies for the indications which we are currently pursuing for MBX-8025, including homozygous familial hypercholesterolemia (HoFH) and Primary Biliary Cirrhosis (PBC). If MBX-8025 does not demonstrate safety or efficacy in the treatment of any of these indications, or if the benefits of treatment with MBX-8025 do not outweigh the risks, our ability to successfully develop and commercialize MBX-8025 may be adversely affected.*

We have not previously completed a clinical trial of MBX-8025 for any of the indications for which we currently are pursuing, including HoFH and PBC. As a result, although we believe that MBX-8025 may be beneficial to address the diseases for which we are considering redirecting its development, there is no guarantee that MBX-8025 will prove to be safe or efficacious in the treatment of these diseases, or that we will be able to obtain regulatory approval for these indications. The results of these clinical studies and other nonclinical studies may determine whether the benefits perceived from the use of MBX-8025 would outweigh the risks perceived from treatment with MBX-8025.

Delays in clinical trials are common and have many causes, and any delay could result in increased costs to us and jeopardize or delay our ability to obtain regulatory approval and commence product sales.

Clinical testing is expensive, difficult to design and implement, can take many years to complete, and is uncertain as to outcome. We may experience delays in clinical trials at any stage of development and testing of our product candidates. Our planned clinical trials may not begin on time, have an effective design, enroll a sufficient number of subjects, or be completed on schedule, if at all.

Events which may result in delays or unsuccessful completion of clinical trials, including our future clinical trials for arhalofenate, include the following:

- inability to raise funding necessary to initiate or continue a trial;
- delays in obtaining regulatory approval to commence a trial;
- delays in reaching agreement with the FDA or other regulatory authorities on final trial design;
- imposition of a clinical hold following an inspection of our clinical trial operations or trial sites by the FDA or other regulatory authorities;
- delays in reaching agreement on acceptable terms with prospective contract research organizations (CROs) and clinical trial sites;
- delays in obtaining required institutional review board (IRB) approval at each site;
- delays in recruiting suitable patients to participate in a trial;
- delays in having subjects complete participation in a trial or return for post-treatment follow-up;
- delays caused by subjects dropping out of a trial due to side effects or otherwise;
- delays caused by clinical sites dropping out of a trial;
- time required to add new clinical sites; and
- delays by our contract manufacturers to produce and deliver sufficient supply of clinical trial materials.

If initiation or completion of any of our clinical trials for our product candidates, including arhalofenate, is delayed for any of the above reasons, our development costs may increase, the approval process could be delayed, any periods during which we may have the exclusive right to commercialize our product candidates may be reduced and our competitors may bring products to market before us. Any of these events could impair our ability to generate revenues from product sales and impair our ability to generate regulatory and commercialization milestones and royalties, all of which could have a material adverse effect on our business.

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Our product candidates may cause adverse effects or have other properties that could delay or prevent their regulatory approval or limit the scope of any approved label or market acceptance.

Arhalofenate has been studied in a total of 17 clinical trials with over 1,100 subjects. The emergence of adverse events (AEs) caused by arhalofenate in future studies could cause us, other reviewing entities, clinical study sites or regulatory authorities to interrupt, delay or halt clinical studies and could result in the denial of regulatory approval. There is also a risk that our other product candidates, including MBX-8025, may induce AEs, many of which may be unknown at this time. If an unacceptable frequency and/or severity of AEs are reported in our clinical trials for our product candidates, our ability to obtain regulatory approval for product candidates, including arhalofenate and MBX-8025, may be negatively impacted.

Furthermore, if any of our approved products cause serious or unexpected side effects after receiving market approval, a number of potentially significant negative consequences could result, including the following:

- regulatory authorities may withdraw their approval of the product or impose restrictions on its distribution in a form of a risk evaluation and mitigation strategy (REMS);
- regulatory authorities may require the addition of labeling statements, such as warnings or contraindications that could diminish the usage of the product or otherwise limit the commercial success of the affected product;
- we may be required to change the way the product is administered or to conduct additional clinical studies;
- we may choose to discontinue sale of the product;
- we could be sued and held liable for harm caused to patients; and
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of the affected product candidate and could substantially increase the costs of commercializing our product candidates.

We have obtained orphan drug designation for some of the targeted indications for MBX-8025 but not all possible indications for which we may seek approval and we may not be able to obtain or maintain orphan designation or obtain the benefits associated with orphan drug status, including market exclusivity. *

Regulatory authorities in some jurisdictions, including the United States and the European Union, or EU, may designate drugs for relatively small patient populations as orphan drugs. Under the Orphan Drug Act of 1983, as amended, 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 annually in the United States. Generally, if a drug with an orphan drug designation subsequently receives the first marketing approval for the indication for which it has such designation, the drug is entitled to a period of marketing exclusivity, which precludes the FDA or the European Medicines Agency, or EMA, from approving another marketing application for the same drug for that time period. The applicable period is seven years in the United States and ten years in the European Union. The EU 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 or EMA 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 addition, the orphan drug designation does not convey any advantage in, or shorten the duration of, the regulatory review or approval process. Also, regulatory approval for any product candidate may be withdrawn and other candidates may obtain approval before us.

We have obtained orphan-drug designations for MBX-8025 for the treatments of HoFH and Frederickson Type I or V hyperlipoproteinemia. That exclusivity, or any other orphan exclusivity we may receive for another product candidate or indication, may not effectively protect the candidate from competition because: different drugs can be approved for the same condition; the same drugs can be approved for different indications and prescribed off-label; and the first entity with an orphan drug designation to receive regulatory approval for a particular indication will receive marketing exclusivity. If one of our product candidates that receives an orphan drug designation, including MBX-8025, is approved for a particular indication or use within the rare disease or condition, the FDA may later approve the same product for additional indications or uses within that rare disease or condition that are not protected by our exclusive approval. Even after an orphan drug is approved, the FDA can subsequently approve another drug for the same condition if the FDA concludes that the later drug is clinically superior in that it is shown to be safer in a substantial portion of the target population, more effective or makes a major contribution to patient care.

If any product candidate that we successfully develop does not achieve broad market acceptance among physicians, patients, health care payors and the medical community, the revenues that it generates from its sales will be limited.

Even if arhalofenate, MBX-8025 or any other product candidates receive regulatory approval, the products may not gain market acceptance among physicians, patients, health care payors and the medical community. Coverage and reimbursement of our product candidates by third-party payors, including government payors, generally is also necessary for commercial success. The degree of market acceptance of any of our approved products will depend upon a number of factors, including:

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- the efficacy and safety, as demonstrated in clinical studies;
- the risk/benefit profile of our product candidates such as arhalofenate;
- the prevalence and severity of any side effects;
- the clinical indications for which the product is approved;
- acceptance of the product by physicians, other health care providers and patients as a safe and effective treatment;
- the potential and perceived advantages of product candidates over alternative treatments;
- the safety of product candidates seen in a broader patient group, including if physicians prescribe our products for uses outside the approved indications;
- the cost of treatment in relation to alternative treatments;
- the timing of market introduction of competitive products;
- the availability of adequate reimbursement and pricing by third parties and government authorities;
- relative convenience and ease of administration; and
- the effectiveness of our or our partners' sales, marketing and distribution efforts.

If any product candidate is approved but does not achieve an adequate level of acceptance by physicians, hospitals, health care payors and patients, we may not generate sufficient revenue from these products and we may not become or remain profitable.

Potential conflicts of interest arising from relationships and any related compensation with respect to clinical studies could adversely affect the process.

Principal investigators for our clinical studies may serve as scientific advisors or consultants to us from time to time and receive cash compensation in connection with such services. If these relationships and any related compensation result in perceived or actual conflicts of interest, the integrity of the data generated at the applicable clinical study site may be questioned or jeopardized.

We may be subject to costly claims related to our clinical studies and may not be able to obtain adequate insurance.

Because we conduct clinical studies in humans, we face the risk that the use of arhalofenate, MBX-8025 or future product candidates, will result in adverse side effects. We cannot predict the possible harms or side effects that may result from our clinical studies. Although we have clinical study liability insurance, our insurance may be insufficient to cover any such events. There is also a risk that we may not be able to continue to obtain clinical study coverage on acceptable terms. In addition, we may not have sufficient resources to pay for any liabilities resulting from a claim excluded from, or beyond the limit of, our insurance coverage. There is also a risk that third parties that we have agreed to indemnify could incur liability. Any litigation arising from our clinical studies, even if we are ultimately successful, would consume substantial amounts of our financial and managerial resources and may create adverse publicity.

After the completion of our clinical trials, we cannot predict whether or when we will obtain regulatory approval to commercialize our product candidates and we cannot, therefore, predict the timing of any future revenue from our product candidates. Regulatory approval of an NDA is not guaranteed, and the approval process is expensive, uncertain and lengthy.

We cannot commercialize our product candidates, including arhalofenate and MBX-8025, until the appropriate regulatory authorities, such as the FDA, have reviewed and approved the product candidate. The regulatory agencies may not complete their review processes in a timely manner, or we may not be able to obtain regulatory approval for our product candidates. Additional delays may result if a product candidate is brought before an FDA advisory committee, which could recommend restrictions on approval or recommend non-approval of the product candidate. In addition, we may experience delays or rejections based upon additional government regulation from future legislation or administrative action, or changes in regulatory agency policy during the period of product development, clinical studies and the review process. As a result, we cannot predict when, if at all, we will receive any future revenue from commercialization of any of our product candidates, including arhalofenate and MBX-8025. The FDA has substantial discretion in the drug approval process, including the ability to delay, limit or deny approval of a product candidate for many reasons, including the following:

- we may be unable to demonstrate to the satisfaction of regulatory authorities that a product candidate is safe and effective for any indication;
- regulatory authorities may not find the data from nonclinical studies and clinical studies sufficient or may differ in the interpretation of the data;
- regulatory authorities may require additional nonclinical or clinical studies;
- the FDA or foreign regulatory authority might not approve our third party manufacturers' processes or facilities for clinical or commercial product;
- the FDA or foreign regulatory authority may change its approval policies or adopt new regulations;

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- the FDA or foreign regulatory authorities may disagree with the design or implementation of our clinical studies;
- the FDA or foreign regulatory authority may not accept clinical data from studies that are conducted in countries where the standard of care is potentially different from that in the U.S.;
- the results of clinical studies may not meet the level of statistical significance required by the FDA or foreign regulatory authorities for approval;
- we may be unable to demonstrate that a product candidate's clinical and other benefits outweigh its safety risks; and
- the data collection from clinical studies of our product candidates may not be sufficient to support the submission of a NDA or other submission or to obtain regulatory approval in the U.S. or elsewhere.

In addition, events raising questions about the safety of certain marketed pharmaceuticals may result in increased caution by the FDA and other regulatory authorities in reviewing new pharmaceuticals based on safety, efficacy or other regulatory considerations and may result in significant delays in obtaining regulatory approvals.

Even if we obtain regulatory approval for arhalofenate, MBX-8025 and our other product candidates, we will still face extensive regulatory requirements and our products may face future development and regulatory difficulties.

Even if we obtain regulatory approval in the U.S., the FDA may still impose significant restrictions on the indicated uses or marketing of our product candidates, including arhalofenate and MBX-8025, or impose ongoing requirements for potentially costly post-approval studies or post-market surveillance. For example, the labeling ultimately approved for our product candidates, including arhalofenate and MBX-8025, may include restrictions on use due to the specific patient population and manner of use in which the drug was evaluated and the safety and efficacy data obtained in those evaluations.

Arhalofenate, MBX-8025 and our other product candidates will also be subject to additional ongoing FDA requirements governing the labeling, packaging, storage, distribution, safety surveillance, advertising, promotion, record-keeping and reporting of safety and other post-market information. The holder of an approved NDA is obligated to monitor and report AEs and any failure of a product to meet the specifications in the NDA. The holder of an approved NDA must also submit new or supplemental applications and obtain FDA approval for certain changes to the approved product, product labeling or manufacturing process. Advertising and promotional materials must comply with FDA rules and are subject to FDA review, in addition to other potentially applicable federal and state laws. Furthermore, promotional materials must be approved by the FDA prior to use for any drug receiving accelerated approval, the pathway we are pursuing for arhalofenate in the U.S.

In addition, manufacturers of drug products and their facilities are subject to payment of user fees and continual review and periodic inspections by the FDA and other regulatory authorities for compliance with current Good Manufacturing Practices (cGMP), and adherence to commitments made in the NDA. If we, or a regulatory agency, discover previously unknown problems with a product, such as quality issues or AEs of unanticipated severity or frequency, or problems with the facility where the product is manufactured, a regulatory agency may impose restrictions relative to that product or the manufacturing facility, including requesting recall or withdrawal of the product from the market or suspension of manufacturing.

If we, or our third party contractors, fail to comply with applicable regulatory requirements following approval of our product candidate, a regulatory agency may:

- issue an untitled or warning letter asserting violation of the law;
- seek an injunction or impose civil or criminal penalties up to and including imprisonment or monetary fines;
- suspend or withdraw regulatory approval;
- suspend any ongoing clinical trials;
- refuse to approve a pending NDA or supplements to an NDA; or
- request recall and/or seize product.

Any government investigation of alleged violations of law could require us to expend significant time and resources in response and could generate negative publicity. The occurrence of any event or penalty described above may inhibit our ability to commercialize arhalofenate and our other product candidates and inhibit our ability to generate revenues.

The FDA and other regulatory agencies strictly regulate the promotional claims that may be made about prescription products. If we are found to have improperly promoted our products for off-label uses, we may become subject to significant fines and other liability. *

The FDA and other regulatory agencies strictly regulate the promotional claims that may be made about prescription products. In particular, a product may not be promoted for uses that are not approved by the FDA or such other regulatory agencies as reflected in the product's approved labeling. If we receive marketing approval for our product candidates, physicians may nevertheless prescribe such products to their patients in a manner that is inconsistent with the approved label. If we are found to have promoted such off-label uses, we may become subject to significant government fines and other related liability. For example, the federal government has levied large civil and criminal fines against companies for alleged improper promotion and has enjoined several companies from engaging in off-label promotion. The FDA also has requested that companies enter into consent decrees or permanent injunctions under which specified promotional conduct is changed or curtailed.

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Even if we obtain FDA approval for arhalofenate, MBX-8025 or any of our other product candidates in the U.S., we may never obtain approval for or commercialize arhalofenate, MBX-8025 or any of our other product candidates outside of the U.S., which would limit our ability to realize their full market potential.

In order to market any products outside of the U.S., we must establish and comply with numerous and varying regulatory requirements on a country-by-country basis regarding safety and efficacy. Approval by the FDA does not ensure approval by regulatory authorities in other countries or jurisdictions. In addition, clinical trials conducted in one country may not be accepted by regulatory authorities in other countries, and regulatory approval in one country does not guarantee regulatory approval in any other country. Approval processes vary among countries and can involve additional product testing and validation and additional administrative review periods. Seeking foreign regulatory approval could result in difficulties and costs for us and require additional preclinical studies or clinical trials which could be costly and time consuming. Regulatory requirements can vary widely from country to country and could delay or prevent the introduction of our products in those countries. We do not have any product candidates approved for sale in any jurisdiction, including international markets, and we do not have experience in obtaining regulatory approval in international markets. If we fail to comply with regulatory requirements in international markets or to obtain and maintain required approvals, or if regulatory approvals in international markets are delayed, our target market will be reduced and our ability to realize the full market potential of our products will be unrealized.

Our relationships with customers and payors will be subject to applicable anti-kickback, fraud and abuse and other health care laws and regulations, which could expose us to criminal sanctions, civil penalties, contractual damages, reputational harm and diminished profits and future earnings.

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

- the federal health Anti-Kickback Statute prohibits, among other things, persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce or reward 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 federal health care programs such as Medicare and Medicaid;
- the federal False Claims Act imposes criminal and civil penalties, including civil whistleblower or qui tam actions, against individuals or entities for knowingly presenting, or causing to be presented, to the federal government, claims for payment that are false or fraudulent or making a false statement to avoid, decrease or conceal an obligation to pay money to the federal government;
- the federal Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, imposes criminal and civil liability for executing a scheme to defraud any health care benefit program and also imposes obligations, including mandatory contractual terms, with respect to safeguarding the privacy, security and transmission of individually identifiable health information;
- the federal false statements statute prohibits knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false statement in connection with the delivery of or payment for health care benefits, items or services;
- the federal transparency requirements under the Affordable Care Act, commonly referred to as the Physician Payments Sunshine Act, require manufacturers of drugs, devices, biologics and medical supplies to report to the Centers for Medicare and Medicaid Services (CMS) payments and other transfers of value provided to physicians and teaching hospitals and ownership and investment interests held by physicians and other healthcare providers and their immediate family members in certain manufacturers and group purchasing organizations; and
- analogous state laws and regulations, such as state anti-kickback and false claims laws, may apply to sales or marketing arrangements and claims involving health care items or services reimbursed by non-governmental third-party payors, including private insurers, and some state laws require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government in addition to requiring manufacturers to report information related to payments to physicians and other health care providers or marketing expenditures.

Efforts to ensure that our business arrangements with third parties will comply with applicable health care 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 health care 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, exclusion from government funded health care

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programs, such as Medicare and Medicaid, and the curtailment or restructuring of our operations. If any of the physicians or other providers or entities with whom we expect to do business are found to be not in compliance with applicable laws, they may be subject to criminal, civil or administrative sanctions, including exclusions from government funded health care programs.

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

In the U.S. and some foreign jurisdictions, there have been a number of legislative and regulatory changes and proposed changes regarding the health care 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 products for which we obtain marketing approval.

In the U.S., the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Medicare Modernization Act) changed the way Medicare covers and pays for pharmaceutical products. The legislation expanded Medicare coverage for drug purchases by the elderly and introduced a new reimbursement methodology based on average sales prices for physician administered drugs. In addition, this legislation provided authority for limiting the number of drugs that will be covered in any therapeutic class. Cost reduction initiatives and other provisions of this legislation could decrease the coverage and price that we receive for any approved products. While the Medicare Modernization Act applies only to drug benefits for Medicare beneficiaries, private payors often follow Medicare coverage policy and payment limitations in setting their own reimbursement rates. Therefore, any reduction in reimbursement that results from the Medicare Modernization Act may result in a similar reduction in payments from private payors.

More recently, in March 2010, the Affordable Care Act was enacted to broaden access to health insurance, reduce or constrain the growth of health care spending, enhance remedies against fraud and abuse, add new transparency requirements for health care and health insurance industries, impose new taxes and fees on the health industry and impose additional health policy reforms. The Affordable Care Act revises the definition of “average manufacturer price” for reporting purposes, which could increase the amount of Medicaid drug rebates to states. Further, the new law imposes a significant annual fee on companies that manufacture or import branded prescription drug products. New provisions affecting compliance have also been enacted, which may affect our business practices with health care practitioners. We will not know the full effects of the Affordable Care Act until applicable federal and state agencies issue regulations or guidance under the new law. Although it is too early to determine the effect of the Affordable Care Act, the new law appears likely to continue the pressure on pharmaceutical pricing, especially under the Medicare program, and may also increase our regulatory burdens and operating costs.

Legislative and regulatory proposals have been made to expand post-approval requirements and restrict sales and promotional activities for pharmaceutical products. We are not 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.

Risks Related to Our Reliance on Third Parties

We rely on third-party manufacturers to produce our preclinical and clinical drug supplies, and we intend to rely on third parties to produce commercial supplies of any approved product candidates.

We do not own or operate, and we do not expect to own or operate, facilities for product manufacturing, storage and distribution, or testing. We currently rely on third-party manufacturers for supply of our preclinical and clinical drug supplies. We expect that in the future we will continue to rely on such manufacturers for drug supplies that will be used in clinical trials of our product candidates, including arhalofenate, and for commercialization of any of our product candidates that receive regulatory approval.

The facilities used by our contract manufacturers to manufacture the product candidates must be approved by the FDA pursuant to inspections that will be conducted only after we submit an NDA to the FDA, if at all. We are completely dependent on our contract manufacturing partners for compliance with the FDA’s requirements for manufacture of finished pharmaceutical products. If our contract manufacturers cannot successfully manufacture material that conforms to our specifications and the FDA’s strict regulatory requirements of safety, purity and potency, we will not be able to secure and/or maintain FDA approval for our product candidates. In addition, we have no direct control over the ability of the contract manufacturers to maintain adequate quality control, quality assurance and qualified personnel. If our contract manufacturers cannot meet FDA standards, we may need to find alternative manufacturing facilities, which would significantly impact our ability to develop, obtain regulatory approval for or market our product candidates. No assurance can be given that our manufacturers can continue to make clinical and commercial supplies of arhalofenate, or future product candidates, at an appropriate scale and cost to make it commercially feasible.

In addition, we do not have the capability to package and distribute finished products to pharmacies and other customers. Prior to commercial launch, we will enter into agreements with one or more pharmaceutical product packager/distributor to ensure proper supply chain management once we are authorized to make commercial sales of our product candidates. If we receive marketing approval from the FDA, we intend to sell pharmaceutical product packaged and distributed by such suppliers. Although we have entered into agreements with our current contract manufacturers and packager/distributor for clinical trial material, we may be unable to maintain an agreement on commercially reasonable terms, which could have a material adverse impact upon our business.

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We rely on limited sources of supply for the drug substance for our lead product candidate, arhalofenate, and any disruption in the chain of supply may cause delay in developing and commercializing arhalofenate.

It is our expectation that only one supplier of drug substance and one supplier of drug product will be qualified by the FDA. If supply from an approved vendor is interrupted, there could be a significant disruption in commercial supply of arhalofenate. An alternative vendor would need to be qualified through a supplemental registration which would be expensive and could result in further delay. The FDA or other regulatory agencies outside of the U.S. may also require additional studies if a new drug substance or drug product supplier is relied upon for commercial production. These factors could cause the delay of clinical trials, regulatory submissions, required approvals or commercialization of arhalofenate, and cause us to incur additional costs. Furthermore, if our suppliers fail to deliver the required commercial quantities of active pharmaceutical ingredient on a timely basis and at commercially reasonable prices, and we are unable to secure one or more replacement suppliers capable of production at a substantially equivalent cost, our supply chain for arhalofenate may be delayed, which could inhibit our ability to generate revenues.

Manufacturing issues may arise that could increase product and regulatory approval costs or delay commercialization of arhalofenate.

We are increasing the manufacturing batch size in preparation of our Phase 3 study and commercial supplies. As the process is scaled up it may reveal manufacturing challenges or previously unknown impurities which could require resolution in order to proceed with our planned clinical trials and obtain regulatory approval for the commercial marketing of arhalofenate. In the future, we may identify manufacturing issues or impurities which could result in delays in the clinical program and regulatory approval for arhalofenate, increases in our operating expenses, or failure to obtain or maintain approval for arhalofenate.

Our reliance on third-party manufacturers entails risks, including the following:

- the inability to meet our product specifications and quality requirements consistently;
- a delay or inability to procure or expand sufficient manufacturing capacity;
- manufacturing and product quality issues related to scale-up of manufacturing;
- costs and validation of new equipment and facilities required for scale-up;
- a failure to comply with cGMP and similar foreign standards;
- the inability to negotiate manufacturing agreements with third parties under commercially reasonable terms;
- termination or nonrenewal of manufacturing agreements with third parties in a manner or at a time that is costly or damaging to us;
- the reliance on a limited number of sources, and in some cases, single sources for key materials, such that if we are unable to secure a sufficient supply of these key materials, we will be unable to manufacture and sell our product candidates in a timely fashion, in sufficient quantities or under acceptable terms;
- the lack of qualified backup suppliers for those materials that are currently purchased from a sole or single source supplier;
- 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;
- carrier disruptions or increased costs that are beyond our control; and
- the failure to deliver our products under specified storage conditions and in a timely manner.

Any of these events could lead to clinical study delays, failure to obtain regulatory approval or impact our ability to successfully commercialize our products. Some of these events could be the basis for FDA or other regulatory authorities' action, including injunction, recall, seizure, or total or partial suspension of production.

We rely on third parties to conduct, supervise and monitor our clinical studies, and if those third parties perform in an unsatisfactory manner, it may harm our business.

We rely on contract service providers (CSPs) including clinical research organizations, clinical trial sites, central laboratories and other service providers to ensure the proper and timely conduct of our clinical trials. While we have agreements governing their activities, we have limited influence over their actual performance. We have relied and plan to continue to rely upon CSPs to monitor and manage data for our ongoing clinical programs for arhalofenate and our other product candidates, as well as the execution of nonclinical studies. We control only certain aspects of our CSPs' activities. Nevertheless, we are responsible for ensuring that each of our studies is conducted in accordance with the applicable protocol, legal, regulatory and scientific standards and our reliance on the CSPs does not relieve us of our regulatory responsibilities.

We and our CSPs are required to comply with the FDA's guidance, which follows the International Conference on Harmonization Good Clinical Practice (ICH GCP), which are regulations and guidelines enforced by the FDA for all of our product candidates in clinical development. The FDA enforces the ICH GCP through periodic inspections of trial sponsors, principal investigators and clinical trial

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sites. If we or our CSPs fail to comply with the ICH GCP, the clinical 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. For example, upon inspection, the FDA may determine that our Phase 3 clinical trial for arhalofenate, does not comply with the ICH GCP. In addition, our Phase 3 clinical trials for arhalofenate will require a sufficiently large number of test subjects to evaluate the safety and effectiveness of arhalofenate. Accordingly, if our CSPs fail to comply with these regulations or fail to recruit a sufficient number of subjects, we may be required to repeat these Phase 3 clinical trials, which would delay the regulatory approval process.

Our CSPs are not our employees, and we cannot control whether or not they devote sufficient time and resources to our ongoing clinical and nonclinical programs. These CSPs may also have relationships with other entities, including our competitors, for whom they may also be conducting clinical studies, or other drug development activities which could harm our competitive position. We face the risk of potential unauthorized disclosure or misappropriation of our intellectual property by CSPs, which may reduce our trade secret protection and allow our potential competitors to access and exploit our proprietary technology. If our CSPs do not successfully carry out their contractual duties or obligations, fail to meet expected deadlines, or if the quality or accuracy of the clinical data they obtain is compromised due to the failure to adhere to our clinical protocols or regulatory requirements or for any other reasons, our clinical trials may be extended, delayed or terminated, and we may not be able to obtain regulatory approval for, or successfully commercialize arhalofenate or our other product candidates. As a result, our financial results and the commercial prospects for arhalofenate and any other product candidates that we develop would be harmed, our costs could increase, and our ability to generate revenues could be delayed.

Risks Related to Commercialization of Our Product Candidates

The commercial success of arhalofenate, MBX-8025 and our other product candidates will depend upon the acceptance of these products by the medical community, including physicians, patients and health care payors.

If any of our product candidates, including arhalofenate and MBX-8025, receive marketing approval, they may nonetheless not gain sufficient market acceptance by physicians, patients, health care payors and others in the medical community. If these products do not achieve an adequate level of acceptance, we may not generate significant product revenues and we may not become profitable. The degree of market acceptance of any of our product candidates, including arhalofenate and MBX-8025, will depend on a number of factors, including the following:

- demonstration of clinical safety and efficacy in our clinical trials;
- the risk/benefit profile of our product candidates;
- the relative convenience, ease of administration and acceptance by physicians, patients and health care payors;
- the prevalence and severity of any side effects;
- the safety of product candidates seen in a broader patient group, including its use outside the approved indications;
- limitations or warnings contained in the FDA and other regulatory authorities approved label for the relevant product candidate;
- acceptance of the product by physicians, other health care providers and patients as a safe and effective treatment;
- the potential and perceived advantages of product candidates over alternative treatments;
- the timing of market introduction of competitive products;
- pricing and cost-effectiveness;
- the effectiveness of our or any future collaborators' sales and marketing strategies;
- our ability to obtain formulary approval;
- our ability to obtain and maintain sufficient third-party coverage or reimbursement, which may vary from country to country; and
- the effectiveness of our or any future collaborators' sales, marketing and distribution efforts.

If any of our product candidates, including arhalofenate, is approved but does not achieve an adequate level of acceptance by physicians, patients and health care payors, we may not generate sufficient revenue and we may not become or remain profitable.

If we are unable to establish sales and marketing capabilities or enter into agreements with third parties to market and sell our product candidates, we may be unable to generate any revenue.

We currently do not have an organization for the sales, marketing and distribution of pharmaceutical products and the cost of establishing and maintaining such an organization may exceed the cost-effectiveness of doing so. In order to market any products that may be approved, including arhalofenate and MBX-8025, we must build our sales, marketing, managerial and other non-technical capabilities or make arrangements with third parties to perform these services. We may enter into strategic partnerships with third parties to commercialize our product candidates, including arhalofenate and MBX-8025.

If we are unable to build our own sales force or negotiate a strategic partnership for the commercialization of arhalofenate, we may be forced to delay the potential commercialization of arhalofenate, or reduce the scope of our sales or marketing activities for arhalofenate. If we elect to increase our expenditures to fund commercialization activities ourselves, we will need to obtain additional capital, which may not be available to us on acceptable terms, or at all. If we do not have sufficient funds, we will not be able to bring arhalofenate to market or generate product revenue.

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If we are unable to establish adequate sales, marketing and distribution capabilities, whether independently or with third parties, we may not be able to generate sufficient product revenue and may not become profitable. We will be competing with companies that currently have extensive and well-funded marketing and sales operations. Without an internal team or the support of a third party to perform marketing and sales functions, we may be unable to compete successfully against these more established companies.

In addition, there are risks involved with both establishing our own sales and marketing capabilities and entering into arrangements with third parties to perform these services. For example, recruiting and training a sales force is expensive and time-consuming and could delay any product launch. If the commercial launch of a product candidate for which we recruit a sales force and establish marketing capabilities is delayed or does not occur for any reason, we would have prematurely or unnecessarily incurred these commercialization expenses. This may be costly, and our investment would be lost if we cannot retain or reposition our sales and marketing personnel.

If we obtain approval to commercialize any products outside of the U.S., a variety of risks associated with international operations could materially adversely affect our business.

If our product candidates are approved for commercialization, we intend to enter into agreements with third parties to market those product candidates outside the U.S., including for arhalofenate and MBX-8025. We expect that we will be subject to additional risks related to international operations, including the following:

- different regulatory requirements for drug approvals in foreign countries;
- reduced protection for intellectual property rights;
- unexpected changes in tariffs, trade barriers and regulatory requirements;
- economic weakness, including inflation, or political instability in particular foreign economies and markets;
- compliance with tax, employment, immigration and labor laws for employees living or traveling abroad;
- foreign taxes, including withholding of payroll taxes;
- foreign currency fluctuations, which could result in increased operating expenses and reduced revenues, and other obligations incident to doing business in another country;
- workforce uncertainty in countries where labor unrest is more common than in the U.S.;
- production shortages resulting from any events affecting raw material supply or manufacturing capabilities abroad; and
- business interruptions resulting from geopolitical actions, including war and terrorism, pandemics, or natural disasters including earthquakes, typhoons, volcanic eruptions, floods and fires.

We have no prior experience in these areas. In addition, there are complex regulatory, tax, labor and other legal requirements imposed by both the European Union and many of the individual countries in Europe with which we will need to comply. Many U.S.-based biopharmaceutical companies have found the process of marketing their own products in Europe to be very challenging.

If our competitors develop and market products that are more effective, safer or less expensive than arhalofenate, our commercial opportunities will be negatively impacted.

The life sciences industry is highly competitive, and we face significant competition from other pharmaceutical, biopharmaceutical and biotechnology companies and possibly from academic institutions, government agencies and private and public research institutions that are researching, developing and marketing products designed to address the treatment of gout. Our competitors may have significantly greater financial, manufacturing, marketing and drug development resources. Large pharmaceutical companies, in particular, have extensive experience in the clinical testing of, obtaining regulatory approvals for, and marketing of, drugs. New developments, including the development of other pharmaceutical technologies and methods of treating disease, occur in the pharmaceutical and life sciences industries at a rapid pace.

These developments may render our product candidates obsolete or noncompetitive. Compared to us, potential competitors may have substantially greater:

- research and development resources, including personnel and technology;
- regulatory experience;
- experience in pharmaceutical development and commercialization;
- ability to negotiate competitive pricing and reimbursement with third-party payors;
- experience and expertise in exploitation of intellectual property rights; and
- capital resources.

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As a result of these factors, our competitors may obtain regulatory approval of their products more rapidly than we do or may obtain patent protection or other intellectual property rights that limit our ability to develop or commercialize our product candidates. The competitors may also develop products that are more effective, better tolerated, more useful and less costly than our products and they may also be more successful in manufacturing and marketing their products.

Formulary approval and reimbursement may not be available for arhalofenate, MBX-8025 and our other product candidates, which could make it difficult for us to sell our products profitably.

Obtaining formulary approval can be an expensive and time consuming process. We cannot be certain if and when we will obtain formulary approval to allow us to promote our product candidates, including arhalofenate and MBX-8025, into our target markets. Failure to obtain timely formulary approval will limit our commercial success.

Furthermore, market acceptance and sales of arhalofenate, MBX-8025 or any other product candidates that we develop, will depend in part on the extent to which reimbursement for these products and related treatments will be available from government health administration authorities, private health insurers and other organizations. Government authorities and third-party payors, such as private health insurers and health maintenance organizations, decide which medications they will pay for and establish reimbursement levels. A prevailing trend in the U.S. health care industry and elsewhere is cost containment. Government authorities and these third-party payors have attempted to control costs by limiting coverage and the amount of reimbursement for particular medications. Increasingly, third-party payors are requiring that companies provide them with predetermined discounts from list prices and are challenging the prices charged for medical products. We cannot be sure that reimbursement will be available for any product that we commercialize and, if reimbursement is available, what the level of reimbursement will be. Reimbursement may impact the demand for, or the price of, any product for which we obtain marketing approval. We cannot be sure that reimbursement will be available for arhalofenate, or any other product candidates. Also, reimbursement amounts may reduce the demand for, or the price of, our products. If reimbursement is not available, or is available only to limited levels, we may not be able to successfully commercialize arhalofenate, or any other product candidates that we develop.

There have been a number of legislative and regulatory proposals to change the health care system in the U.S. and in some foreign jurisdictions that could affect our ability to sell any future products profitably. These legislative and regulatory changes may negatively impact the reimbursement for any future products, following approval. The availability of generic treatments may also substantially reduce the likelihood of reimbursement for any future products, including arhalofenate. The application of user fees to generic drug products will likely expedite the approval of additional generic drug treatments. We expect to experience pricing pressures in connection with the sale of arhalofenate and any other product candidate that we develop, due to the trend toward managed health care, the increasing influence of health maintenance organizations and additional legislative changes.

In addition, there may be significant delays in obtaining reimbursement for approved products, and coverage may be more limited than the purposes for which the product is approved by the FDA or health authorities in other countries. Moreover, eligibility for reimbursement does not imply that any product will be paid for in all cases or at a rate that covers our costs, including research, development, manufacture, sale and distribution. Interim payments for new products, if applicable, may also not be sufficient to cover our costs and may not be made permanent. Payment rates may vary according to the use of the product and the clinical setting in which it is used, may be based on payments allowed for lower cost products that are already reimbursed, and may be incorporated into existing payments for other services. Net prices for products may be reduced by mandatory discounts or rebates required by government health care programs or private payors and by any future relaxation of laws that presently restrict imports of products from countries where they may be sold at lower prices than in the U.S. Third-party payors often rely upon Medicare coverage policy and payment limitations in setting their own reimbursement policies.

If we are unable to promptly obtain coverage and profitable payment rates from both government funded and private payors for any of our product candidates, including arhalofenate, it could have a material adverse effect on our operating results, our ability to raise capital needed to commercialize products and our overall financial condition.

Even if we receive regulatory approval for arhalofenate or MBX-8025, we will be subject to ongoing FDA and other regulatory obligations and continued regulatory review, which may result in significant additional expense and limit our ability to commercialize arhalofenate or MBX-8025.

Any regulatory approvals that we or potential collaboration partners receive for arhalofenate, MBX-8025 or future product candidates, may also be subject to limitations on the indicated uses for which the product may be marketed or contain requirements for potentially costly post-marketing studies. In addition, even if approved, the labeling, packaging, adverse event reporting, storage, advertising, promotion and recordkeeping for any product will be subject to extensive and ongoing regulatory requirements. The subsequent discovery of previously unknown problems with a product, including AEs of unanticipated severity or frequency, may result in restrictions on the marketing of the product, and could include withdrawal of the product from the market. Depending on any safety issues associated with our product candidates that are approved, the FDA may require a REMS, thereby imposing certain restrictions on the sale and marketability of such products or additional post-marketing requirements.

Regulatory policies may change and additional government regulations may be enacted that could prevent or delay regulatory approval of our product candidates. We cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative action, either in the U.S. or abroad. If we are not able to maintain regulatory compliance, we might not be permitted to market arhalofenate or future products, if any, and we may not achieve or sustain profitability.

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

We face an inherent risk of product liability exposure related to the testing of our product candidates in human clinical studies, and will face an even greater risk if we sell our product candidates commercially. An individual may bring a liability claim against us if one of our product candidates causes, or merely appears to have caused, an injury. If we cannot successfully defend ourselves against product liability claims, we will incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in the following:

- decreased demand for our product candidates;
- impairment to our business reputation;
- withdrawal of clinical study participants;
- distraction of management's attention from our primary business;
- substantial monetary awards to patients or other claimants;
- the inability to commercialize our product candidates; and
- loss of revenues.

We do carry product liability insurance for our clinical studies. Further, we intend to expand our insurance coverage to include the sale of commercial products if marketing approval is obtained for any of our product candidates. However, we may be unable to obtain this product liability insurance on commercially reasonable terms and with insurance coverage that will be adequate to satisfy any liability that may arise. On occasion, large judgments have been awarded in class action or individual lawsuits relating to marketed pharmaceuticals. A successful product liability claim or series of claims brought against us could cause our stock price to decline and, if judgments exceed our insurance coverage, could decrease our cash and adversely affect our business.

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.

The success of our business depends primarily upon our ability to identify, develop and commercialize product candidates. Because we have limited financial and managerial resources, we focus on product candidates for specific indications. As a result, we may forego or delay pursuit of opportunities with other product candidates or other indications that later prove to have greater commercial potential. We may focus our efforts and resources on product candidates that ultimately prove to be unsuccessful.

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 advantageous for us to retain sole development and commercialization rights.

We are planning to study the combination of arhalofenate plus febuxostat in our planned Phase 3 program and if the results of these studies are positive, we will only be able to commercialize this combination if we are able to obtain febuxostat from an FDA qualified supplier, which we may not be able to do.

In order to commercialize a fixed dose combination product containing arhalofenate and febuxostat we would need to obtain febuxostat drug substance from a supplier that has been qualified by the FDA. If we are not able to identify a supplier, or if the supplier is not able to receive approval, we will not be able to receive approval for our fixed-dose combination product. In addition, we may need a license if the supplier's manufacturing process or final product infringes another party's valid patent. If we are not successful at obtaining a required license our ability to commercialize arhalofenate may be significantly diminished.

Risks Related to Our Intellectual Property

If we are unable to obtain or protect intellectual property rights related to our products and product candidates, we may not be able to compete effectively in our market.

We rely upon a combination of patents, trade secret protection and confidentiality agreements to protect the intellectual property related to our products and product candidates. The strength of patents in the biotechnology and pharmaceutical field involves complex legal and scientific questions and can be uncertain. The patent applications that we own, co-own or in-license may fail to result in issued patents with claims that cover the products in the U.S. or in other countries. If this were to occur, early generic competition could be expected against arhalofenate and other product candidates in development. There is no assurance that all of the potentially relevant prior art relating to our patents and patent applications has been found, which can invalidate a patent or prevent a patent from issuing based on a pending patent application. Even if patents do successfully issue, third parties may challenge their validity, enforceability, scope or ownership, which may result in such patents, or our rights to such patents, being narrowed or invalidated. Furthermore, even if they are unchallenged, our patents and patent applications may not adequately protect our intellectual

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property or prevent others from designing around our claims. If the patent applications we hold or license with respect to arhalofenate fail to issue or if their breadth or strength of protection is threatened, it could dissuade companies from collaborating with us and threaten our ability to commercialize our products. We cannot offer any assurances about which, if any, patents will issue or whether any issued patents will be found invalid or unenforceable, will be challenged by third parties or will adequately protect our products and product candidates. Further, if we encounter delays in development or regulatory approvals, the period of time during which we could market arhalofenate under patent protection could be reduced. Since patent applications in the U.S. and most other countries are confidential for a period of time after filing, and some remain so until issued, we cannot be certain that we or our licensors were the first to file any patent application related to arhalofenate or our other product candidates. Furthermore, if third parties have filed such patent applications, an interference proceeding in the U.S. can be provoked by a third party or instituted by us to determine who was the first to invent any of the subject matter covered by the patent claims of our applications. An unfavorable outcome could require us to cease using the related technology or to attempt to license it from the prevailing party, which may not be available on commercially reasonable terms or at all.

In addition to the protection afforded by patents, we rely on trade secret protection and confidentiality agreements to protect proprietary know-how that is not patentable, processes for which patents are difficult to enforce and other elements of our drug discovery and development processes that involve proprietary know-how, information or technology that is not covered by patents. Although we expect all of our employees to assign their inventions to us, and all of our employees, consultants, advisors and any third parties who have access to our proprietary know-how, information or technology to enter into confidentiality agreements, we cannot provide any assurances that all such agreements have been duly executed, that such agreements provide adequate protection and will not be breached, that our trade secrets and other confidential proprietary information will not otherwise be disclosed or that competitors will not otherwise gain access to our trade secrets or independently develop substantially equivalent information and techniques. If we are unable to prevent material disclosure of the non-patented intellectual property related to our technologies to third parties, and there is no guarantee that we will have any such enforceable trade secret protection, we may not be able to establish or maintain a competitive advantage in our market, which could materially adversely affect our business, results of operations and financial condition.

Further, the laws of some foreign countries do not protect patents and other proprietary rights to the same extent or in the same manner as the laws of the U.S. As a result, we may encounter significant problems in protecting and defending our intellectual property abroad. We may also fail to pursue or obtain patents and other intellectual property protection relating to our products and product candidates in all foreign countries.

Third-party claims of intellectual property infringement may prevent or delay our development and commercialization efforts or otherwise affect our business.

Our commercial success depends in part on our avoiding infringement and other violations of the patents and proprietary rights of third parties. There is a substantial amount of litigation, both within and outside the U.S., involving patent and other intellectual property rights in the biotechnology and pharmaceutical industries, including patent infringement lawsuits, interferences, oppositions and inter party re-examination proceedings before the U.S. Patent and Trademark Office (U.S. PTO) and its foreign counterparts. Numerous U.S. and foreign issued patents and pending patent applications, which are owned by third parties, exist in the fields in which we and our collaborators are developing product candidates. As the biotechnology and pharmaceutical industries expand and more patents are issued, and as we gain greater visibility and market exposure as a public company, the risk increases that our product candidates or other business activities may be subject to claims of infringement of the patent and other proprietary rights of third parties.

Third parties may assert that we are employing their proprietary technology without authorization. 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 arhalofenate and/or our other product candidates. Because patent applications can take many years to issue, there may be currently pending patent applications which may later result in issued patents that our product candidates may infringe. In addition, third parties may obtain patents in the future and claim that use of our technologies infringes upon these patents. If any third-party patents were held by a court of competent jurisdiction to cover the manufacturing process of any of our product candidates, any molecules formed during the manufacturing process or any final product itself, the holders of any such patents may be able to block our ability to commercialize such product candidate unless we obtained a license under the applicable patents, or until such patents expire. Similarly, if any third-party patent were held by a court of competent jurisdiction to cover aspects of our formulations, processes for manufacture or methods of use, including combination therapy, the holders of any such patent may be able to block our ability to develop and commercialize the applicable product candidate unless we obtained a license or until such patent expires. In either case, such a license may not be available on commercially reasonable terms or at all. In addition, we may be subject to claims that we are infringing other intellectual property rights, such as trademarks or copyrights, or misappropriating the trade secrets of others, and to the extent that our employees, consultants or contractors use intellectual property or proprietary information owned by others in their work for us, disputes may arise as to the rights in related or resulting know-how and inventions.

Parties making claims against us may obtain injunctive or other equitable relief, which could effectively block our ability to further develop and commercialize one or more of our product candidates. Defense of these claims, regardless of their merit, would involve substantial litigation expense and would be a substantial diversion of employee resources from our business. In the event of a successful infringement or other intellectual property claim against us, we may have to pay substantial damages, including treble

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damages and attorneys' fees for willful infringement, obtain one or more licenses from third parties, pay royalties or redesign our affected products, which may be impossible or require substantial time and monetary expenditure. We cannot predict whether any such license would be available at all or whether it would be available on commercially reasonable terms. Furthermore, even in the absence of litigation, we may need to obtain licenses from third parties to advance our research or allow commercialization of our product candidates, and we have done so from time to time. We may fail to obtain any of these licenses at a reasonable cost or on reasonable terms, if at all. In that event, we would be unable to further develop and commercialize one or more of our product candidates, which could harm our business significantly. We cannot provide any assurances that third-party patents do not exist which might be enforced against our products or product candidates, resulting in either an injunction prohibiting our sales, or, with respect to our sales, an obligation on our part to pay royalties and/or other forms of compensation to third parties.

We license certain key intellectual property from third parties, and the loss of our license rights could have a materially adverse effect on our business.

We are a party to a number of technology licenses that are important to our business and expect to enter into additional licenses in the future. For example, we rely on an exclusive license to certain patents, proprietary technology and know-how from DiaTex, which include arhalofenate. During the term of the exclusive license with DiaTex we may perform research and development of compounds and products for the treatment of human disease based on the patents, proprietary technology and know-how from DiaTex. If we fail to comply with our obligations under our agreement with DiaTex, including our obligations to pay royalty payments during the development and commercialization of arhalofenate, or our other license agreements, or if we are subject to a bankruptcy, the licensor may have the right to terminate the license, in which event we would not be able to develop or market products covered by the license, including in the case of the DiaTex license, arhalofenate, which would have a materially adverse effect on our business.

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

Competitors may infringe or otherwise violate our patents, the patents of our licensors or our other intellectual property rights. To counter infringement or unauthorized use, we may be required to file legal claims, which can be expensive and time-consuming. In addition, in an infringement proceeding, a court may decide that a patent of ours or our licensors is not valid or is unenforceable, or may refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover the technology in question. An adverse result in any litigation or defense proceedings could put one or more of our patents at risk of being invalidated or interpreted narrowly and could put our patent applications at risk of not issuing. The initiation of a claim against a third party may also cause the third party to bring counter-claims against us.

We may not be able to prevent, alone or with our licensors, misappropriation of our intellectual property rights, particularly in countries where the laws may not protect those rights as fully as in the U.S. Our business could be harmed if in a litigation if the prevailing party does not offer us a license on commercially reasonable terms. Any litigation or other proceedings to enforce our intellectual property rights may fail, and even if successful, may result in substantial costs and distract our management and other employees.

Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. There could also be public announcements of the results of hearings, motions or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, it could have a material adverse effect on the price of our common stock.

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

Periodic maintenance fees on any issued patent are due to be paid to the U.S. PTO and foreign patent agencies in several stages over the lifetime of the patent. The U.S. PTO and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other similar provisions during the patent application process. While an inadvertent lapse can in many cases be cured by payment of a late fee or by other means in accordance with the applicable rules, 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. Non-compliance events that could result in abandonment or lapse of a patent or patent application include, but are not limited to, failure to respond to official actions within prescribed time limits, non-payment of fees and failure to properly legalize and submit formal documents. If we or our licensors that control the prosecution and maintenance of our licensed patents fail to maintain the patents and patent applications covering our product candidates, we may lose our rights and our competitors might be able to enter the market, which would have a material adverse effect on our business.

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Risks Related to Our Business Operations and Industry

Our future success depends on our ability to retain key executives and to attract, retain and motivate qualified personnel.

We are highly dependent on principal members of our executive team listed under “Business — Executive Officers of Registrant” of our Annual Report on Form 10-K as filed with the SEC on March 23, 2015. While we have entered into employment agreements or offer letters with each of our executive officers, any of them could leave our employment at any time, as all of our employees are “at will” employees. We do not maintain “key person” insurance for any of our executives or other employees. Recruiting and retaining other qualified employees for our business, including scientific and technical personnel, will also be critical to our success. There is currently a shortage of skilled executives in our industry, which is likely to continue. We also experience competition from universities and research institutions for the hiring of scientific and clinical personnel. As a result, competition for skilled personnel is intense and the turnover rate can be high. We may not be able to attract and retain personnel on acceptable terms given the competition among numerous pharmaceutical and biotechnology companies for similar personnel. In addition, failure of any of our clinical studies may make it more challenging to recruit and retain qualified personnel. If we are unable to successfully recruit key employees or replace the loss of services of any executive or key employee, it may adversely affect the progress of our research, development and commercialization objectives.

In addition, we rely on consultants and advisors, including scientific and clinical advisors, to assist us in formulating our research and development and commercialization strategy. Our consultants and advisors may be employed by employers other than us and may have commitments under consulting or advisory contracts with other entities that may limit their availability to us, which could also adversely affect the progress of our research, development and commercialization objectives.

We will need to expand our organization, and we may experience difficulties in managing this growth, which could disrupt our operations. *

As of September 30, 2015, we had 20 full-time employees. As our company matures, we expect to expand our employee base to increase our managerial, clinical, scientific and engineering, operational, sales, and marketing teams. Future growth would impose significant additional responsibilities on our management, including the need to identify, recruit, maintain, motivate and integrate additional employees, consultants and contractors. Also, our management may need to divert a disproportionate amount of its attention away from our day-to-day activities and devote a substantial amount of time to managing these growth activities. We may not be able to effectively manage the expansion of our operations, which may result in weaknesses in our infrastructure, give rise to operational mistakes, loss of business opportunities, loss of employees and reduced productivity among remaining employees. Our expected growth could require significant capital expenditures and may divert financial resources from other projects, such as the development of product candidates. If our management is unable to effectively manage our growth, our expenses may increase more than expected, our ability to generate and/or grow revenues could be reduced, and we may not be able to implement our business strategy. Our future financial performance and our ability to commercialize arhalofenate and our other product candidates and compete effectively will depend, in part, on our ability to effectively manage any future growth.

Our internal computer systems, or those used by our contract research organizations or other contractors or consultants, may fail or suffer security breaches.

Despite the implementation of security measures, our internal computer systems and those of our contract research organizations and other contractors and consultants are vulnerable to damage from computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. While we have not experienced any such system failure, accident or security breach to date, if such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our product candidate development programs. For example, the loss of clinical study data from completed or ongoing clinical studies for a product candidate could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. To the extent that any disruption or security breach was to result in a loss of or damage to our data or applications, or inappropriate disclosure of confidential or proprietary information, we could incur liability and the further development of any product candidates could be delayed.

Risks Relating to Owning Our Common Stock

An active trading market for our common stock may not develop and the market price for our common stock may decline in value.

Our common stock is listed on the NASDAQ Capital Market under the symbol “CBAY”. Historically, trading volume for our common stock has been very limited. The historical trading prices of our common stock on the NASDAQ Capital Market may not be indicative of the price levels at which our common stock will trade in the future, and we cannot predict the extent to which investor interest in us generally will lead to the development of an active public trading market for our common stock or how liquid that public market may become.

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Our stock price may be volatile, and our stockholders' investment in our stock could decline in value.

The trading price of our common stock is likely to be volatile. Our stock price could be subject to wide fluctuations in response to a variety of factors, including:

- adverse results or delays in preclinical testing or clinical trials;
- inability to obtain additional funding;
- any delay in filing an IND or NDA for any of our future product candidates or any adverse development or perceived adverse development with respect to the FDA's review of that IND or NDA;
- failure to maintain our existing collaborations or enter into new collaborations;
- failure of our collaboration partners to elect to develop or commercialize product candidates under our collaboration agreements or the termination of any programs under our collaboration agreements;
- failure by us or our licensors and collaboration partners to prosecute, maintain or enforce our intellectual property rights;
- failure to successfully develop and commercialize our future product candidates;
- changes in laws or regulations applicable to future products;
- inability to obtain adequate product supply for our future product candidates or the inability to do so at acceptable prices;
- adverse regulatory decisions;
- introduction of new products, services or technologies by our competitors;
- failure to meet or exceed financial projections we may provide to the public;
- failure to meet or exceed the estimates and projections of the investment community;
- the perception of the pharmaceutical industry by the public, legislatures, regulators and the investment community;
- announcements of significant acquisitions, strategic partnerships, joint ventures or capital commitments by us, our collaboration partners or our competitors;
- disputes or other developments relating to proprietary rights, including patents, litigation matters and our ability to obtain patent protection for our technologies;
- additions or departures of key scientific or management personnel;
- significant lawsuits, including patent or stockholder litigation;
- changes in the market valuations of similar companies;
- sales of our common stock by us or our stockholders in the future; and
- trading volume of our common stock.

In addition, companies trading in the stock market in general have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of these companies. Broad market and industry factors may negatively affect the market price of our common stock, regardless of our actual operating performance.

Our executive officers, directors and principal stockholders own a significant percentage of our stock and will be able to exert significant control over matters submitted to our stockholders for approval.

Our executive officers, directors and stockholders who own more than 5% of our outstanding common stock, together beneficially own a significant number of shares of our common stock. Therefore, these stockholders will have the ability to influence us through this ownership position as well as influence all matters requiring stockholder approval. For example, these stockholders, acting together, may be able to substantially influence elections of directors, amendments to our organizational documents, or approval of any merger, sale of assets, or other major corporate action. This may prevent or discourage unsolicited acquisition proposals or offers for our common stock that you may believe are in your best interest as one of our stockholders.

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Sales of a substantial number of shares of our common stock in the public market by our existing stockholders could cause our stock price to fall.

Sales of a substantial number of shares of our common stock in the public market, or the perception that these sales might occur, could depress the market price of our common stock and could impair our ability to raise capital through the sale of additional equity securities. We are unable to predict the effect that sales may have on the prevailing market price of our common stock.

Future sales and issuances of our common stock or rights to purchase common stock, including pursuant to our equity incentive plans, could result in additional dilution of the percentage ownership of our stockholders and could cause our stock price to fall. *

We expect that significant additional capital will be needed in the future to continue our planned operations. To the extent we raise additional capital by issuing equity securities, our stockholders may experience substantial dilution. 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. For example, on July 28, 2014, we consummated a public offering of our common stock on a registration statement on Form S-1 pursuant to which we sold 4,600,000 shares of our common stock, including shares sold in connection with the exercise by the underwriters in the offering of an over-allotment of 600,000 shares, at a price of \$5.50 per share, for aggregate net proceeds of \$23.0 million. On November 7, 2014, we filed a \$100 million registration statement on Form S-3 with the SEC and also entered into an ATM to sell up to \$25 million of common stock under the registration statement under which we have sold additional shares of our common stock for net proceeds to us of \$4.3 million during the period January 1, 2015 through September 30, 2015. On July 20, 2015 and July 27, 2015, we sold shares of our common stock for net proceeds to us of \$21.1 million. If in the future, we sell common stock, convertible securities or other equity securities, investors may be materially diluted by subsequent sales. These sales may also result in material dilution to our existing stockholders, and new investors could gain rights superior to our existing stockholders. Pursuant to our equity incentive plans, our management is authorized to grant stock options and other equity-based awards to our employees, directors and consultants. The number of shares available for future grant under our equity incentive plans as of September 30, 2015 was 254,367 shares.

We do not anticipate paying cash dividends, and accordingly, stockholders must rely on stock appreciation for any return on their investment.

We do not anticipate paying cash dividends in the future. As a result, only appreciation of the price of our common stock, which may never occur, will provide a return to stockholders. Investors seeking cash dividends should not invest in our common stock. In addition, our ability to pay cash dividends is currently prohibited without the prior consent of the lender pursuant to the terms of our 2015 loan and security agreement with Silicon Valley Bank and Oxford Finance LLC.

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

Our share price may be volatile, and 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.

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

Provisions in our amended and restated certificate of incorporation and our bylaws may delay or prevent an acquisition of us. In addition, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, who are responsible for appointing the members of our management team. In addition, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which prohibits, with some exceptions, stockholders owning in excess of 15% of our outstanding voting stock from merging or combining with us. Finally, our charter documents establish advance notice requirements for nominations for election to our board of directors and for proposing matters that can be acted upon at stockholder meetings. Although we believe these provisions together provide for an opportunity to receive higher bids by requiring potential acquirers to negotiate with our board of directors, they would apply even if the offer may be considered beneficial by some stockholders.

We have previously identified material weaknesses in our internal controls over financial reporting. *

Maintaining effective internal controls over financial reporting is necessary for us to produce accurate financial statements on a timely basis. In connection with the preparation of our financial statements for the three and six months ended June 30, 2014, we identified material weaknesses in our internal control over financial reporting. In the second half of 2014, we remediated these material weaknesses by, among other things, designing and implementing new procedures and controls. We expect to continue to incur costs associated with implementing appropriate processes and internal controls, which could include new employee compensation costs and fees for additional audit and consulting services, which could negatively affect our financial condition and operating results.

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However, effective internal controls are necessary for us to produce reliable financial reports and are important to help prevent financial fraud. Our independent registered public accounting firm will not be required to attest to the effectiveness of our internal control over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act until the later of the year following our first annual report required to be filed with the SEC or the date we are no longer an “emerging growth company” as defined in the JOBS Act, because we are taking advantage of the exemptions contained in the JOBS Act. To build the infrastructure to allow us to assess the effectiveness of our internal control over financial reporting, we hired our Controller in the first quarter of 2014 to assist us in improving our accounting systems, disclosure policies, procedures and controls. This effort is on-going and will be costly and time consuming. If we are unsuccessful in building an appropriate accounting infrastructure, we may not be able to prepare and disclose, in a timely manner, our financial statements and other required disclosures, or comply with existing or new reporting requirements. We cannot assure you that there will not be material weaknesses in our internal control over financial reporting in the future. 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 achieve effective internal control over financial reporting, or if our independent registered public accounting firm determines we continue to have a material weakness in our internal control over financial reporting, we could lose investor 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 Stock Market, 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.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

Unregistered Sale of Equity Securities

From July 1, 2015 to September 30, 2015, we issued warrants exercisable for 114,436 shares of our common stock to the lenders in our 2015 term loan facility with a term of ten years and an exercise price of \$2.84 per share. The issuance of the warrant was in reliance on Rule 506 and Regulation D under the Securities Act.

Use of Proceeds

We consummated a public offering of our common stock on a registration statement on Form S-1 (File No. 333-195127) that was declared effective by the SEC on July 21, 2014, pursuant to which we sold 4,600,000 shares of our common stock, including shares sold in connection with the exercise by the underwriters in the offering of an over-allotment of 600,000 shares, at a price of \$5.50 per share, for aggregate gross proceeds of \$25.3 million which we refer to as our 2014 public offering. The offering was made pursuant to a prospectus dated July 21, 2014. Cowen and Company, LLC and Stifel, Nicolaus & Company, Incorporated were the managing underwriters in the offering.

As of September 30, 2015, we estimate that we had used all \$23.0 million of net proceeds from our 2014 public offering with approximately \$16.8 million of the proceeds on the development of MBX-8025 and ongoing development of arhalofenate and approximately \$6.2 million for working capital, capital expenditures and other general corporate purposes. There has been no material change in the expected use of the net proceeds from our public offering as described in our final prospectus filed with the SEC pursuant to Rule 424(b) on July 22, 2014 (File No. 333-195127).

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Item 6. Exhibits

See the Exhibit Index which follows the signature page of this Quarterly Report on Form 10-Q, which is incorporated herein by reference.

SIGNATURES

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

CYMABAY THERAPEUTICS, INC.

By: /s/ Harold Van Wart
Harold Van Wart
Chief Executive Officer
(Duly Authorized Officer and Principal
Executive Officer)

Date: November 12, 2015

By: /s/ Sujal Shah
Sujal Shah
Chief Financial Officer
(Principal Financial and Accounting Officer)

Date: November 12, 2015

INDEX TO EXHIBITS

<u>Exhibit Number</u>	<u>Description of Document</u>
3.1	Amended and Restated Certificate of Incorporation (Filed with the SEC as Exhibit 3.1 to our Amendment No. 2 to Registration Statement on Form 10, filed with the SEC on October 17, 2013, SEC File No. 000-55021).
3.2	Amended and Restated By-Laws. (Filed with the SEC as Exhibit 3.2 to our Amendment No. 2 to Registration Statement on Form 10, filed with the SEC on October 17, 2013, SEC File No. 000-55021).
4.1	Reference is made to Exhibits 3.1 and 3.2.
4.2	Form of Registration Rights Agreement (Filed with the SEC as Exhibit 4.2 to our Amendment No. 2 to Registration Statement on Form 10, filed with the SEC on October 17, 2013, SEC File No. 000-55021).
4.3	Form of 2013 Financing Warrant (Filed with the SEC as Exhibit 4.3 to our Amendment No. 2 to Registration Statement on Form 10, filed with the SEC on October 17, 2013, SEC File No. 000-55021).
4.4	Amendment No. 1 to Registration Rights Agreement. (Filed with the SEC as Exhibit 4.4 to our Form 10-K, filed with the SEC on March 31, 2014, SEC File No. 000-55021).
10.1*	Master Services Agreement for Clinical Phase IIb/III Development Services Only, dated September 2, 2015, between CymaBay Therapeutics, Inc. and Pharmaceutical Research Associates, Inc.
10.2	Loan and Security Agreement, dated August 7, 2015, by and among CymaBay Therapeutics, Inc., Oxford Finance LLC, And Silicon Valley Bank
31.1	Certification of Chief Executive Officer pursuant to Rule 13-a-14(a) or Rule 15(d)-14(a) of the Exchange Act
31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Exchange Act
32.1	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 13a-14(b) or 15d-14(b) of the Exchange Act
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Schema Linkbase Document
101.CAL	XBRL Taxonomy Calculation Linkbase Document
101.DEF	XBRL Taxonomy Definition Linkbase Document
101.LAB	XBRL Taxonomy Labels Linkbase Document
101.PRE	XBRL Taxonomy Presentation Linkbase Document

* Confidential treatment has been requested for portions of this exhibit.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

Exhibit 10.1

**MASTER SERVICES AGREEMENT
FOR CLINICAL PHASE IIb/III DEVELOPMENT SERVICES ONLY**

This Master Services Agreement for Clinical Phase IIb/III Development Services Only (the “**Agreement**”) is entered into September 2, 2015 and is effective as of September 2, 2015 (the “**Effective Date**”) by and between **CYMABAY THERAPEUTICS, INC.**, a Delaware corporation with its principal place of business at 7999 Gateway Blvd., Ste. 130, Newark, CA 94560 (“**CymaBay**”) and **PHARMACEUTICAL RESEARCH ASSOCIATES, INC.**, a Virginia corporation with its principal place of business at 4130 ParkLake Avenue, Suite 400, Raleigh, NC 27612 (hereinafter referred to as “**CRO**”).

WHEREAS, CymaBay is a biopharmaceutical company engaged in the development of pharmaceutical products; and

WHEREAS, CRO is a contract research organization engaged in the business of managing clinical research programs and providing clinical development services; and

WHEREAS, CymaBay may wish to retain the services of CRO from time to time to perform clinical development services in connection with certain clinical research program(s) of CymaBay’s proprietary products (each, a “**Project**”), in which case the terms and conditions for each such Project will be set forth in a statement of work to be attached to this Agreement and incorporated herein by reference (each, a “**Statement of Work**”); and

WHEREAS, CRO is willing to provide such services to CymaBay in accordance with the terms and conditions of this Agreement and the attached Statements of Work.

NOW THEREFORE, for good and valuable consideration contained herein, the exchange, receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Services.

1.1 **Services to be Provided by CRO.** CRO hereby agrees to provide to CymaBay the services identified and described in the Services section of each Statement of Work entered into by the parties in accordance with Section 1.2 (the “**Services**”). CRO will perform the Services for each Project set forth in the applicable Statement of Work in compliance with (a) this Agreement and the applicable Statement of Work, (b) CRO’s standard operating procedures unless otherwise specified in the applicable Statement of Work, (c) CymaBay’s reasonable instructions, unless such instructions conflict with subclauses (d)-(f) herein, (d) all applicable laws and regulations including, without limitation, the Food, Drug and Cosmetic Act, as amended, Good Clinical Practices promulgated by the United States Food and Drug Administration (“**FDA**”) and all other applicable FDA regulations, (e) International Conference on Harmonisation Harmonised Tripartite Guideline for Good Clinical Practice (“**ICH-GCP**”), (f) all applicable data protection and privacy laws including, without limitation, the Health Insurance Portability and Accountability Act of 1996 and regulations, laws and guidelines related thereto

(collectively “**HIPAA**”) and the Health Information Technology for Economic and Clinical Health Act, and (g) the protocol for the Project (“**Protocol**”), which will be made a part of the Statement of Work. In addition, CRO will comply with the requirements of 21 CFR Part 11 as it pertains to any electronic data systems. CRO will perform the Services in a professional, diligent, and timely manner as a contract research organization in accordance with 21 C.F.R. § 312.52. CRO confirms that all of its personnel who perform Services under this Agreement are appropriately trained and qualified to perform the Services.

1.2 Statements of Work. This Agreement allows the parties to contract Services for multiple Projects through the issuance of different Statements of Work without having to renegotiate the basic terms and conditions contained in this Agreement. The parties agree that this Agreement does not impose any obligations on either party to enter into any Statement of Work. The specific details of each Statement of Work will be separately negotiated and specified in writing in a form acceptable to the parties. Each Statement of Work will include, as appropriate: (a) the scope of Services to be performed by CRO; (b) the projected date of commencement of the Services; (c) the timeline, Budget and Payment Schedule (each as defined in Section 2.1 below) for the Services; (d) the deliverables to be provided by CRO; (e) the materials and documentation to be provided by each party; and (f) the regulatory obligations of CymaBay that are transferred to CRO with respect to the Project, as required by 21 C.F.R. § 312.52, ICH-GCP, and/or any other applicable laws and regulations. CymaBay will not transfer any obligations under 21 C.F.R. § 312.52, ICH-GCP, and/or any other applicable laws and regulations unless CRO provides its express written permission, which can take the form of an executed Statement of Work containing the provisions to be transferred. A Statement of Work must be executed by both parties before CRO commences work under the Statement of Work, unless the parties otherwise agree in writing. Each executed Statement of Work will be attached to and deemed an integral part of this Agreement. The Statement of Work and this Agreement will constitute the entire agreement for the applicable Project. To the extent any terms set forth in a Statement of Work conflict with the terms set forth in this Agreement, the terms of this Agreement will control unless otherwise expressly set forth in the Statement of Work. The parties agree that no general terms and conditions in whatever form, including but not limited to standard terms that may appear on any quotations, orders, invoices, or other such documents, used by either party in the course of this Agreement or any Statement of Work will have any legal effect upon the parties.

1.3 Changes in Scope. Modifications and amendments to each Statement of Work are subject to a written agreement between the parties (a “**Change Order**”). If a party requests any changes to the scope of the Services for a particular Project from those set forth in the applicable Statement of Work, it will notify the other party in writing of such changes, including without limitation, any changes resulting from amendments to the applicable Protocol. Within [*] of its receipt of such request, CRO will prepare a written change notification containing an estimate of the increase or decrease in the Budget and/or timeline resulting from such changes. [*] Once a Change Order is fully executed by all parties, such Change Order will constitute an amendment to the applicable Statement of Work and the Services will thereafter constitute those Services set forth in the Statement of Work as amended by the Change Order. CRO will not be reimbursed for Pass-Through Costs (as defined in Section 2.1) or compensated for work performed outside the scope of the applicable Statement of Work unless such Services and the costs for such Services are reflected in a Change Order signed by both parties or are provided for in a change notification described in this Section and approved by CymaBay prior to CRO commencing such additional work or incurring such expenses. The parties will use diligent efforts to have the Change Order signed by both parties or to have a written change notification

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approved by their respective authorized representatives prior to CRO commencing such additional work or incurring such expenses, although the parties recognize that there may be circumstances where this is not possible. In the event that CymaBay requires out-of-scope work to commence immediately, CymaBay will provide CRO with authorization to begin services via e-mail while the change notification or Change Order is in process. The cost of such work will be consistent with the agreed-upon Budget of the applicable Statement of Work and the parties agree to work in good faith to promptly execute each Change Order. Notwithstanding anything herein to the contrary, to the extent that any changes to the scope of Services requested by CymaBay consist of a reduction in the Services to be performed for a particular Project, CRO will immediately cease performing such Services at CymaBay's request (unless subject safety would be at risk, in which case CRO will cease performing such Services as soon as practicable) and the parties will negotiate in good faith a reduction to the budget and a change notification or Change Order, as appropriate, reflecting such change as soon as practicable. [*]

1.4 Investigator Agreements. [*]

1.5 Equipment. Unless otherwise specified in the applicable Statement of Work, if a Statement of Work provides for CRO, either on its own or through a third party vendor, to loan equipment including, without limitation, echocardiogram machines (“**Equipment**”), to clinical trial sites for use by such sites in connection with performing a clinical trial sponsored by CymaBay, title to all such Equipment will not be transferred to the clinical trial sites. Such Equipment will be provided in accordance with the specifications of the Statement of Work. CRO will endeavor to provide or will cause a third party to provide Equipment that is in good working order; if Equipment provided by CRO or a third party vendor arranged by CRO is not in good working order, CRO will work with the vendor to repair such Equipment or replace such Equipment with Equipment that is in good working order as soon as practicable. In the event that any Equipment is damaged or defective for any reason other than due to the acts or omissions of the personnel at the clinical trial sites, CRO will work with the clinical trial sites to have such Equipment repaired or obtain replacement equipment as soon as practicable.

1.6 Disclosures to Certain Committees. With respect to any committee of which CRO or any of CRO's Affiliates, employees, agents or representatives that directly perform Services hereunder is a member and such committee sets drug formularies, and/or develops clinical practice guidelines (“**Committee**”), CRO and its Affiliates, employees, agents or representatives, as applicable, promptly will inform such Committee of the existence of this Agreement and the nature of the Services provided under this Agreement in accordance with the policies and procedures of such Committee. For purposes of this Agreement, an “**Affiliate**” is any entity that is controlled by, controls, or is under common control with the applicable party, with the word “control” (including, with correlative meaning, the terms “controlled by” or “under common control with”) meaning the actual power, either directly or indirectly through one or more intermediaries, to direct the management and policies of such entity, whether by the ownership of at least fifty percent (50%) of the voting stock of such entity, or by contract or otherwise.

2. Compensation and Payment.

2.1 Charges for Services. CymaBay will pay CRO for all Services performed under this Agreement and a particular Statement of Work in accordance with the budget and payment schedule for such Services set forth in such Statement of Work (the “**Budget**” and “**Payment Schedule**”, respectively). Unless otherwise specified in a Statement of Work, the Budget for

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each Project will specify the labor fees payable for the performance of the Services (the “**Direct Fees**”), and the Payment Schedule will specify whether payments for Direct Fees will become due upon achievement of milestones or otherwise. [*] In addition, the Budget for each Project will include an itemized breakdown of the estimated out-of-pocket expenses that will be incurred by CRO in connection with the performance of Services for such Project including, without limitation, travel expenses, shipping and postage costs, copying and printing fees, copyright fees, third party drug storage and distribution fees, required Investigational Review Board or similar board or committee fees, and other pass-through expenses reasonably expected to be incurred in connection with performing the Services and in compliance with CRO’s travel policy provided to CymaBay prior to the Effective Date, (collectively, the “**Pass-Through Costs**”) and any grants or fees to be paid on CymaBay’s behalf to investigators and investigator sites in accordance with Section 1.4 (“**Investigator Grants**”). CymaBay will reimburse CRO for all Pass-Through Costs incurred in accordance with the Budget, provided that CRO provides to CymaBay [*]. [*] CRO will submit to CymaBay quarterly invoices in advance for estimated amounts to be paid to Investigators to be incurred in the upcoming quarter to ensure that adequate funds are available to pay such expenses. [*] Within [*] after the completion of the Services under a Statement of Work, CRO will provide to CymaBay a written, detailed accounting and reconciliation of Direct Fees, Pass-Through Costs, Investigator Grants, advance payments (if any), and other payments made by CymaBay, together with a final invoice for Services under the Statement of Work and a payment for any amounts that are to be refunded to CymaBay.

2.2 Rejected Work. CymaBay will have the right to reject work or deliverables that do not meet the specifications of the Statement of Work or that are incomplete or contain errors (such work, “**Rejected Work**”). CymaBay will notify CRO in writing of all Rejected Work and the reasons why CymaBay is rejecting such work promptly after CymaBay becomes aware of such Rejected Work, but in no case greater than [*] after becoming aware. Notwithstanding the foregoing, CymaBay will pay for the portions of the Services that conform to the Statement of Work and the requirements of this Agreement within [*] of receipt of the invoice. [*]

2.3 Monthly Reports and Invoices. Except as otherwise expressly provided in a Statement of Work, CRO will submit to CymaBay on a monthly basis for each Project, based on the Payment Schedule, a detailed summary report describing the Services performed on such Project during the prior month, the Direct Fees due for such Services, all Pass-Through Costs paid by CRO during the prior month, and any related pre-approved expenses incurred by CRO during the prior month (such report, the “**Monthly Report**”). Each Monthly Report provided by CRO will include details as agreed upon by the parties in each Statement of Work. For payments that become due upon the achievement of milestones, CRO will submit a written invoice to CymaBay for the applicable payment amount upon successful completion of each milestone. [*] Payment terms will be [*] after CymaBay’s receipt of each due and undisputed invoice; [*].

All checks will be made payable as specified in the Statement of Work, or, in the absence of any specification in the Statement of Work to:

Payments to PRA shall be made to:

Pharmaceutical Research Associates, Inc.
P.O. Box 200072
Dallas, TX 75320-0072

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Payments via **overnight mail** shall be made to:

Pharmaceutical Research Associates, Inc.
MAC# T5399-01X
2975 Regent Blvd.
Irving, TX 75063-3140
(213) 833-3803

Payments via **wire transfer** shall be made to:

Pharmaceutical Research Associates, Inc.
San Francisco, CA
Account No: [*]
ABA No: [*]
Account Name: Pharmaceutical Research Associates, Inc.
Tax ID #: 54-1204111

[*]

For clarity, unless otherwise approved by CymaBay in writing (including e-mail approval), CymaBay will not be obligated to make any payments for Services that are in excess of the amounts for such Services set forth in the Budget and Payment Schedule of the applicable Statements of Work. Pass-Through Costs that are not invoiced within [*] from the date such Pass-Through Costs are incurred by CRO will not be paid by CymaBay.

2.4 **Disputed Invoices.** CymaBay will notify CRO within [*] of its receipt of an invoice submitted under Section 2.3 if it disputes such invoice or any portion thereof and the reason for the dispute. If any portion of an invoice is undisputed, then CymaBay shall pay the undisputed amounts according to the payment terms. CymaBay and CRO shall work collaboratively using good faith efforts to resolve the disputed figures. While the parties work to resolve good-faith disputes under this Section, neither party will be deemed to be in breach of the Agreement.

2.5 **Exchange Rate.** The parties acknowledge and agree that all amounts set forth in each Statement of Work will be [*]. The Parties agree that neither should receive a material benefit or detriment from currency exchange rate fluctuation between the currencies in which costs are incurred, and the currencies used for pricing or invoicing and payment.

For Direct Fees- [*].

Expenses- [*]

2.6 **Taxes.** All fees for Direct Fees, Pass-Through Expenses, and Investigator Grants are exclusive of Value Added Tax (VAT) (including non-refundable VAT), local taxes, and social taxes, which CymaBay will pay when applicable. Each party shall be separately responsible for payment of its federal, state and local income taxes. CRO shall be responsible for invoicing CymaBay, for and CymaBay shall be responsible for remitting to CRO, and CRO shall be responsible for remitting to the taxing authority, all sales or use taxes and goods and services taxes, including VAT, imposed on account of a transaction made under a Statement of Work. CRO shall notify CymaBay within a reasonable time upon becoming aware that any sales or use tax or goods and services taxes are applicable to any of the fees payable or expenses reimbursable

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under this Agreement, and the parties shall cooperate in good faith and in a lawful manner to minimize such taxes. If sales or use tax or goods and services taxes are applicable to any of the fees payable or expenses reimbursable under this Agreement all such taxes shall be separately itemized on the related invoices and promptly remitted by CRO to the taxing authority. If requested by either party, such party shall deliver to the other official documentation for any such taxes paid by such party. If CRO performs Services for a particular Project and a goods and services tax such as VAT in European countries or similar taxes in other countries are levied on Pass-Through Costs made by CRO on CymaBay's behalf, CRO will initially pay such taxes on behalf of CymaBay and will use diligent efforts to recover all amounts paid for such taxes from the applicable authorities where legal remedies exist. All amounts paid by CRO for such taxes that are subsequently recovered by CRO will, at CymaBay's option, be refunded to CymaBay or credited against charges for Services performed or Pass-Through Costs incurred by CRO under a Statement of Work until such amounts have been fully credited.

2.7 Audits of Financial Records. CRO will keep complete, true, and accurate books of account and records in connection with the Services in sufficient detail to permit accurate determination of all figures necessary for CymaBay to verify the amounts that CymaBay has paid CRO for the performance of such Services and pass-through expenses incurred for a Project. CymaBay and/or an independent accounting firm appointed by CymaBay [*] will have the option to audit the expense documentation with respect to a particular Statement of Work during [*], for a period of [*] following the expiration or termination of the Statement of Work in order to determine the accuracy of the invoices provided to CymaBay by CRO. CRO will [*]. Audits conducted under this Section 2.8 will be at the expense of CymaBay, unless the amount determined to be overpaid by CymaBay exceeds [*], whereupon CRO will bear the fees and expenses reasonably incurred by CymaBay in connection with performing such audit, with such fees and expenses not to exceed the amount of the overpayment at issue. If an audit reveals that CymaBay has overpaid, CRO will reimburse CymaBay for the overpaid amount within [*] after the conclusion of the audit.

2.8 Compensation. The parties agree that the amount of compensation payable to CRO for the performance of Services reflects the fair market value of the Services being performed. The parties acknowledge and confirm that CRO has been selected to participate in the Services because of its experience in the relevant subject matter and not, in any way, as an inducement to, or in return for prescribing, purchasing, using, recommending preferential formulary status, or dispensing any product of CymaBay or any of its Affiliates. The parties agree that the payments provided under this Agreement are consistent with arm's length transactions, and are not in exchange for any agreement by CRO to prescribe, use or recommend the prescription or use of any product of CymaBay or CymaBay's Affiliates.

3. Term and Termination.

3.1 Term. The term of this Agreement will commence on the Effective Date and will remain in effect for five (5) years or until terminated as provided in this Section 3, whichever is earlier; provided, however, that if upon expiration of this Agreement there is an ongoing Statement of Work, this Agreement shall remain in full force as it relates to the Statement of Work in place and shall terminate immediately with the expiration or termination of said Statement of Work unless extended prior to such time. Each Statement of Work will be effective upon the effective date indicated in the Statement of Work and will expire upon the completion of Services to be provided thereunder, unless earlier terminated in accordance with this Section 3.

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3.2 Termination by CymaBay. CymaBay may terminate this Agreement or any individual Statement of Work for any reason upon thirty (30) days' prior written notice to CRO.

3.3 Termination for Material Breach. Either party may terminate this Agreement or a Statement of Work if the other party materially breaches the terms of this Agreement or of such Statement of Work and such breaching party fails to cure the breach within thirty (30) days after receipt of written notice from the non-breaching party specifying the nature of such breach.

3.4 Termination for Bankruptcy. Either party may terminate this Agreement or any Statement of Work immediately upon written notice to the other party, if the other party: (i) files a petition for bankruptcy or has an involuntary bankruptcy petition filed against it that is not dismissed [*]; (ii) is adjudged as bankrupt; (iii) becomes insolvent; (iv) has a receiver, trustee, conservator or liquidator appointed for all or a substantial part of its assets; (v) ceases to do business; (vi) commences any dissolution, liquidation or winding up; or (vii) makes an assignment of all or substantially all of its assets for the benefit of its creditors.

3.5 Effect of Termination. The termination of this Agreement by either party will automatically terminate all Statements of Work, unless otherwise agreed in writing. However in the event of expiration of this Agreement, any outstanding Statement of Work will continue until completion of the Services described in such Statement of Work or appropriate termination of the Statement of Work. Upon the receipt or provision of a notice of termination of this Agreement or a Statement of Work, CRO will not undertake further work, incur additional expenses, or enter into further commitments with regard to this Agreement or the applicable Statement of Work except as may be otherwise requested by CymaBay. CRO will cooperate with CymaBay to provide for an orderly wind-down and/or transition of the Services provided by CRO hereunder in accordance with a wind-down plan mutually agreed to by the parties, at CymaBay's expense. Upon termination of any Statements of Work or this Agreement, CymaBay will pay CRO for all Direct Fees for Services performed in accordance with the provisions of this Agreement and the applicable Statements of Work, and Pass-Through Costs incurred through the termination date as calculated in accordance with the provisions of this Agreement and the Budget in the applicable Statements of Work, as well as all reasonably incurred expenses associated with winding down the Services in accordance with a wind-down plan mutually agreed to by the parties; provided, however, that CRO has used commercially reasonable efforts to cancel or otherwise limit such Services and Pass-Through Costs as of the date on which it receives or provides notice of termination, as applicable. In addition, CymaBay will reimburse CRO for all reasonable, future non-cancelable obligations to third parties for Pass-Through Costs to be incurred in accordance with the Budget for the applicable Statements of Work (where such obligations were created as a result of a Project being authorized by the CymaBay); provided, however, that CRO has used commercially reasonable efforts to cancel or reduce the amount of such third party obligations. No later than [*] after the date of termination of a Statement of Work or this Agreement, CRO will submit to CymaBay an itemized accounting of Services performed for the applicable Project, the Pass-Through Costs incurred as calculated in accordance with the provisions of this Agreement and the Budget in the applicable Statement of Work, the amount of any non-cancellable obligations to third parties for Pass-Through Costs that were to be incurred by CRO in accordance with the Budget for such terminated Statement of Work, and the amount of payments received from CymaBay in order to determine the amount of the balance owed by, or the overpayment to be refunded to, CymaBay. Any balance owed by CymaBay will be paid within [*] of receipt of such an itemized accounting. Any amounts to be refunded to CymaBay will be refunded to CymaBay at the time that CRO provides to CymaBay the itemized accounting, which will be no later than [*] after the date of termination of a Statement of Work or this Agreement.

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3.6 Provisions Surviving Termination. The obligations of the parties contained in Sections 1.6, 1.7, 2, 3.5, 3.6, , 5, 6, 8, 9, 10.2, 10.3, 10.4, 11.2, 11.4, 11.5, 11.6, 11.7, 11.9, 11.12, and 11.4 hereof will survive termination of this Agreement.

4. Personnel.

The Services with respect to each Project will be performed by CRO under the direction of the person identified as the Project Manager in the applicable Statements of Work. In addition, the Statements of Work may identify other key personnel performing Services on behalf of CRO with respect to a Project (“**Key Personnel**”). [*]

5. Confidentiality.

5.1 Confidential Information. Subject to the limitations set forth in Section 5.3, all information in whatever form maintained, including, without limitation, oral, written, electronic, or other form, that (a) is provided by or on behalf of CymaBay to CRO relating to a Project or a potential Project, (b) is developed, generated, or obtained by or on behalf of CRO as a result of performing Services under this Agreement, including, without limitation, Inventions (as defined in Section 6.2), or (c) was previously disclosed to CRO by or on behalf of CymaBay and constitutes CymaBay Confidential Information (as such term is defined in the Letter Agreement entered into by and between CRO and CymaBay effective July 14, 2015 (the “**Letter Agreement**”)) pursuant to the Letter Agreement will, in each case, be deemed to be “**CymaBay Confidential Information**”. Subject to the limitations set forth in Section 5.3, (i) CRO’s proposals, pricing, or quotations (except to the extent that any of the foregoing incorporate CymaBay Confidential Information) and standard operating procedures disclosed to CymaBay by CRO, (ii) all other information disclosed to CymaBay by CRO that is or has been previously independently developed by CRO and that a reasonable person would understand was confidential at the time of disclosure, or (iii) all information that was previously disclosed to CymaBay by or on behalf of CRO and constitutes CRO Confidential Information (as such term is defined in the Letter Agreement) pursuant to the Letter Agreement, will be deemed to be “**CRO Confidential Information**”. CymaBay Confidential Information and CRO Confidential Information may be referred to herein individually and collectively as “**Confidential Information**”. For purposes of this Agreement, each party is the “**Disclosing Party**” with respect to its own Confidential Information, and a “**Receiving Party**” with respect to the Confidential Information of the other party.

5.2 Use and Non-Disclosure of Confidential Information. The Receiving Party will: (a) use the Disclosing Party’s Confidential Information solely for the purposes contemplated by this Agreement and for no other purpose without the prior written consent of the Disclosing Party; (b) not disclose the Disclosing Party’s Confidential Information to any third party without first obtaining the written consent of the Disclosing Party; and (c) protect the confidentiality of the Disclosing Party’s Confidential Information with at least the same degree of care used to protect its own confidential and/or proprietary information from unauthorized use or disclosure, but in no event with less than reasonable care. The Receiving Party will be permitted to furnish and otherwise disclose the other party’s Confidential Information to those of its directors, officers, Affiliates, employees, agents, contractors, permitted assignees and agents who need to know such Confidential Information in connection with the performance of the Services or to

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accomplish the purposes of this Agreement, which purposes include, in the case of CymaBay, developing and seeking regulatory approval for its proprietary drugs that are the subject of any Services, provided that such personnel are bound by obligations of confidentiality and non-use with respect to such Confidential Information that are no less protective than those provided herein. In addition, CymaBay may disclose CRO Confidential Information to its actual and potential corporate partners, licensors, licensees, external advisors and bona fide investors as necessary, provided that such recipients are bound by obligations of confidentiality and non-use with respect to such Confidential Information that are substantially similar to those provided herein [*]. [*] is [*] in connection with [*], and [*]. If the Receiving Party discloses the Disclosing Party's Confidential Information to a third party with the Disclosing Party's permission as permitted herein, the Receiving Party will ensure that all Confidential Information disclosed to such third party is identified as confidential at the time of disclosure. The Receiving Party will cause all individuals and entities that receive the Disclosing Party's Confidential Information from the Receiving Party to comply with the Receiving Party's obligations of confidentiality and non-use under this Section 5.2. Any breach by such individuals or entities of any of the Receiving Party's obligations hereunder will be deemed a breach by the Receiving Party, and the Disclosing Party may proceed directly against the Receiving Party for such breach without any obligation to proceed against such individuals or entities.

5.3 Exceptions to Confidential Information. The obligations of confidentiality set forth in Section 5.2 will not apply to that part of the Disclosing Party's Confidential Information that the Receiving Party is able to demonstrate by competent proof:

- (a) was already known to the Receiving Party, other than under an obligation of confidentiality, at the time of disclosure by the Disclosing Party;
- (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) later became part of the public domain through no act or omission of the Receiving Party; or
- (d) was disclosed to the Receiving Party without obligations of confidentiality with respect thereto, by a third party who had no obligation to the Disclosing Party not to disclose such information to others without restriction.

Confidential Information will not be deemed to be in the public domain merely because any part of the information is embodied in general disclosures or because individual features, components or combinations of the information are known or become known to the public.

5.4 Disclosure Required by Law. The Receiving Party may disclose the Disclosing Party's Confidential Information without violating the obligations of this Agreement to the extent that such disclosure is (a) required by a valid order of a court or other governmental body having jurisdiction, (b) required by applicable law or regulation, (c) necessary for filings with regulatory or governmental agencies including, without limitation, the U.S. Securities & Exchange Commission and the FDA, or (d) made in connection with prosecuting, defending, or providing testimony in litigation, provided that the Receiving Party provides the Disclosing Party with reasonable prior written notice of such disclosure if practicable, and at the Disclosing Party's request and expense assists the Disclosing Party in obtaining a protective order or other appropriate remedy preventing or limiting the disclosure and/or requiring that the Disclosing

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Party's Confidential Information so disclosed be used only for the purposes for which the law or regulation requires, for which the order was issued, for the applicable regulatory or governmental filing, or for the applicable litigation.

5.5. **Return of Confidential Information.** At the Disclosing Party's request, the Receiving Party will return all Confidential Information provided by the Disclosing Party in documentary form, or, at the Disclosing Party's request, destroy all or such parts of the Disclosing Party's Confidential Information as the Disclosing Party will direct, including any copies thereof made by the Receiving Party. Notwithstanding the foregoing, the Receiving Party may retain one copy of the Disclosing Party's Confidential Information in its secure files solely for archival purposes and to meet its obligations under this Agreement and applicable laws and regulations, subject to the ongoing obligation to maintain the confidentiality of such information.

5.6. **Remedy.** Each party acknowledges that disclosure or distribution of the other's Confidential Information or use of the information contrary to the terms of this Agreement may cause irreparable harm for which damages at law may not be an adequate remedy. Accordingly, the Disclosing Party hereunder may seek to enforce the provisions of this Agreement prohibiting disclosure or distribution of its Confidential Information or use thereof contrary to the provisions hereof in a court of competent jurisdiction, in addition to any and all other remedies available at law or in equity.

5.7. **Privacy Laws.** CRO confirms that: (i) all individually identifiable data of clinical trial subjects obtained from CRO in the course of providing Services will be handled in accordance with all applicable privacy laws, rules and regulations, and used and disclosed only for the purpose of the Project as outlined in the Protocol or to the extent permitted by authorizations/informed consents obtained from such subjects; (ii) it has technical and organizational measures in place and will maintain such measures to prevent unauthorized or unlawful processing, accidental loss or destruction of, or damage to such data; and (iii) it will securely store all Study data and records, including any case report forms ("CRFs") and source documents that identify or link a clinical trial subject to a CRF.

6. Intellectual Property.

6.1. **No License.** Each party agrees that neither party transfers to the other party by operation of this Agreement any patent right, copyright right, trademark right or other intellectual property right of such party, except as may be specifically provided herein.

6.2. **CymaBay Property.** CRO will promptly disclose to CymaBay all improvements, inventions, formulae, processes, techniques, work product, know-how and data, whether or not patentable, that are generated, conceived, discovered or reduced to practice by CRO, its Affiliates, or their respective employees, agents, or subcontractors, whether solely or jointly with other (including CymaBay) arising out of the performance of the Services under this Agreement that: [*] (collectively, "**Inventions**"). All Inventions and all deliverables will be the sole and exclusive property of CymaBay and will be CymaBay Confidential Information; provided, however, that the term "Inventions" does not include CRO Property (as such term is defined in Section 6.3). CRO hereby assigns and transfers to CymaBay all of CRO's right, title and interest in any and all Inventions. CRO will, and will cause its Affiliates and any individual or entity that performed any Services on its behalf hereunder to, take, at CymaBay's request and expense, all further acts reasonably required to convey full title in the Inventions to CymaBay and for CymaBay to apply for, secure, and maintain patent or other proprietary protection of such Inventions.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

6.3 CRO Property. “CRO Property” means [*]. All CRO Property is the sole and exclusive property of CRO, and will be CRO Confidential Information. Notwithstanding the foregoing, if CRO incorporates any CRO Property into any Project data or any other deliverable provided to CymaBay under a Statement of Work, CymaBay will have the right to use, and to grant others the right to use, such CRO Property solely in connection with its use and distribution of the deliverables.

7. Representations and Warranties.

7.1 Mutual Representations and Warranties. (a) Each of the parties represents and warrants to the other that: (i) it is a corporation duly incorporated, validly existing and in good standing; (ii) it has taken all necessary actions on its part to authorize the execution, delivery and performance of the obligations undertaken in this Agreement, and that no other corporate actions are necessary with respect thereto; (iii) it is not a party to any agreement or understanding and knows of no law or regulation that would prohibit it from entering into and performing this Agreement; (iv) when executed and delivered by it, this Agreement will constitute a legal, valid and binding obligation of it, enforceable against it in accordance with this Agreement’s terms; (v) performance of its obligations hereunder will not infringe or violate the rights of any third party including but not limited to property, contractual, employment, trademark, trade secrets, copyright, patent, proprietary information and non-disclosure rights; and (vi) it is duly licensed, authorized or qualified to do business and is in good standing in every jurisdiction in which a license, authorization or qualification is required for it to perform its obligations under this Agreement.

(b) Each of the parties represents and warrants to the other that it will comply with all applicable laws and regulations including, without limitation, the Food, Drug and Cosmetic Act, as amended; Good Clinical Practices promulgated by the FDA and all other applicable FDA regulations including but not limited to the regulations set forth in 21 CFR Parts 11, 50, 54, 56 and 312; International Conference on Harmonisation Harmonised Tripartite Guideline for Good Clinical Practice (“ICH-GCP”); all applicable data protection and privacy laws; the Clinical Trials Directive (Directive 2001/20/EC of 4th April 2001) and the Data Protection Directive (Directive 95/46/EC of 24th October 1995) and the respective implementing legislation; Commission Directive 2005/28/EC of 8 April 2005 laying down principles and detailed guidelines for good clinical practice as regards investigational medicinal products for human use; all bribery, fraud, kickback, or other similar anti-corruption law or regulation of any relevant country, including the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act of 1977 and the Federal Anti-Kickback Statute, laws and regulations pertaining to the use, dissemination and disclosure of individually identifiable patient information, to the extent such laws and regulations apply to the parties, including but not limited to the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995, and the Declaration of Helsinki of the 41st World Medical Assembly, South Africa 1996 as amended.

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7.2 Representations and Warranties of CRO. CRO hereby represents and warrants as follows:

(a) the terms of this Agreement are not inconsistent with its other contractual arrangements, and it will not enter into any other agreements which would interfere with or prevent performance of the obligations described herein;

(b) it will perform its obligations hereunder in accordance with the current industry standards, the terms of this Agreement and any Statement of Work issued hereunder;

(c) All of its Affiliates, employees, agents, or representatives that perform Services possess valid and effective licenses, certificates or other applicable permits from all governmental regulatory authorities (“**Regulatory Authorities**”) that are legally required for conducting the Services, and they do not have knowledge that any Regulatory Authority is in the process of actually limiting, suspending, modifying or revoking any such applicable license, certificate or permit. If any such license, certificate or permit is suspended or revoked during the term of this Agreement, CRO will immediately notify CymaBay in writing;

(d) each employee of CRO that will perform any Services has executed an agreement with, or otherwise has legal obligations to, CRO providing that all inventions conceived or reduced to practice while providing services for CRO will be owned by CRO, and that all confidential information of CRO and of CRO’s customers will be maintained in confidence and not used or disclosed to third parties except as agreed in advance in writing;

(e) neither CRO nor any of its Affiliates, employees, contractors or representatives that perform Services hereunder: (1) has ever been debarred or convicted of a crime for which a person or entity can be debarred under 21 U.S.C. § 335a; (2) has ever been excluded by the Office of Inspector General (“**OIG**”) or other government entity; or (3) to CRO’s knowledge, is currently or is threatened to be under investigation by any regulatory authority that could lead to that party becoming a debarred person or entity as defined by 21 U.S.C. § 335 (a) or (b) or excluded by the OIG or other government entity under any other applicable laws or regulations. If, during the term of this Agreement, CRO or any of its Affiliates, employees, contractors or representatives that perform Services is or becomes the subject of a proceeding that could lead to debarment or exclusion of that party, CRO will immediately notify CymaBay in writing and CymaBay will have the right to immediately terminate this Agreement and any ongoing Statements of Work upon written notice. CRO agrees to provide written certification to CymaBay that it has not used the services of any debarred or excluded person or entity in any capacity to perform Services if such certification is requested by CymaBay in connection with any certification regarding debarment or exclusion that CymaBay may make to the FDA or any other Regulatory Authority in connection with an investigational drug that was the subject of a Project; and

(f) neither it nor any of its Affiliates, employees, agents or representatives that perform Services will pay any fees to a physician for the referral of clinical trial subjects.

7.3 CymaBay Acknowledgement and Representations/Warranties: [*] Furthermore, CymaBay represents and warrants:

(a) that it has the right, title and interest in the investigational drug which is the subject of research covered by this Agreement or any Statement of Work (whether such right, title and interest is held solely by CymaBay or jointly with others) and that it has the legal right, authority and power to sponsor any clinical trial which is the subject of a Statement of Work issued hereunder;

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(b) that for any software application, dictionary, computer system or program that CymaBay specifically requires CRO to use in the performance of Services that is not standard in the CRO industry, and for which CRO informs CymaBay that it does not hold a license at the commencement of this Agreement or the relevant Statement of Work, CymaBay will have acquired and will maintain current and valid licenses which are necessary for the use of such applications or programs, and CRO's use of such applications or programs for the performance of Services in accordance with this Agreement and any specifications or restrictions of which CRO is notified will not subject CRO to any liability for such use. CRO will use any such applications, dictionaries, systems or programs solely for the performance of Services. With respect to proprietary dictionaries such as [*], if CymaBay does not currently have such licenses, it represents and warrants that such licenses will be in place prior to CRO's delivery of data which is coded using these dictionaries. CRO will not be liable to CymaBay for use of data coded without proper licensing, and CymaBay will hold CRO harmless in these occasions; and

(c) that study drugs used in a Study that is provided by or on behalf of CymaBay will be manufactured, packaged, labeled, and shipped in accordance with all applicable laws, rules, and regulations, including, without limitation, applicable current Good Manufacturing Practices ("cGMPs") as such cGMPs may be adopted in any nations in which such study drugs are imported or manufactured, as applicable

7.4 **Disclaimer of Warranties.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER CYMABAY NOR CRO MAKES ANY REPRESENTATIONS OR EXTENDS ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE OR FITNESS FOR A PARTICULAR PURPOSE. BOTH PARTIES UNDERSTAND AND AGREE THAT ALL DRUGS THAT ARE THE SUBJECT OF PROJECTS ARE EXPERIMENTAL IN NATURE.

8. Publication.

CRO may not publish any articles or make any presentations relating to the Services provided to CymaBay hereunder with respect to a Project or referring to data, information or materials generated as part of the Services without the prior written consent of CymaBay.

9. Indemnification.

9.1 **CymaBay Indemnity.** CymaBay will indemnify, defend and hold harmless CRO and its employees, Affiliates, directors, officers, CRO Selected Subcontractors (as defined in Section 11.8), permitted subcontractors and agents (collectively, the "**CRO Indemnitees**") from and against any and all damages, liabilities, losses, costs and expenses of any kind or nature whatsoever, including, without limitation, reasonable attorney's fees, expert witness and court costs (collectively, "**Losses**"), incurred in connection with any claim, demand, action, or proceeding brought by a third party (each, a "**Claim**") arising from [*]; provided however, that CymaBay will have no obligation of indemnity hereunder with respect to a Claim to the extent that such Claim arises from [*].

9.2 **CRO Indemnity.** CRO will indemnify, defend, and hold harmless CymaBay and its employees, Affiliates, directors, officers, and agents (collectively, the "**CymaBay Indemnitees**") from and against any and all Losses incurred in connection with any Claim arising from [*] provided, however, that CRO will have no obligation of indemnity hereunder with respect to any Claim to the extent that such Claim arises from [*]

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9.3 Indemnification Procedure. Each party's agreement to indemnify, defend, and hold harmless the other party and its respective indemnitees is conditioned upon the indemnified party: (a) providing written notice to the indemnifying party of any claim, demand, or action arising out of the indemnified activities within [*] after the indemnified party has knowledge of such claim, demand, or action; provided that any failure on the part of an indemnified party to notify the indemnifying party of receipt of notice of a claim will relieve the notified party of its obligation to indemnify the notifying party for such claim under this Agreement only to the extent that the notified party has been prejudiced by the lack of timely and adequate notice; (b) permitting the indemnifying party to assume full responsibility and authority to investigate, prepare for, settle, and defend against any such claim, demand, or action; (c) assisting the indemnifying party, at the indemnifying party's reasonable expense, in the investigation of, preparation for and defense of any such claim, demand, or action; and (d) not compromising or settling such claim, demand, or action without the indemnifying party's written consent.

9.4 Insurance. For the duration of this Agreement and for a period of [*] following the termination or expiration of all Statements of Work [*] Insurance should be placed with carriers with an A.M. Best ratings of at least "A, VIII" and will have an effective date retroactive to the date any Services are performed and will be maintained for a commercially reasonable period of time after termination or completion of the applicable Statement of Work. Upon request, each party will provide the other party with a certificate of insurance evidencing such coverage. Each party will provide the other party with written notice of cancellation or of a material adverse change in the policy or policies of insurance required pursuant to this Section 9.4 promptly after such party becomes aware of such cancellation or material adverse change. CRO also agrees that it will maintain, at its own expense, workers' compensation insurance in the amount required by the laws of the state in which CRO's employees are located.

9.5 Limitation of Liability. IN NO EVENT WILL EITHER PARTY BE ENTITLED TO, NOR SHALL EITHER PARTY BE RESPONSIBLE FOR, IN CONTRACT OR IN TORT, ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL LOSSES OR DAMAGES (INCLUDING LOST PROFITS) ARISING IN CONNECTION WITH A PARTY'S DEFAULT OR BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT. [*]. However, the foregoing exclusions of damages recoverable and limitation of liability in this Section 9.5 will not [*]

10. Record Storage; Audits and Regulatory Inspections.

10.1 Record Maintenance During Project. During the term of this Agreement, CRO will maintain all materials and all other data obtained or generated by CRO in the course of providing the Services hereunder, including all computerized records and files (collectively, "**Records**") as required by the applicable Protocol, this Agreement and all applicable laws and regulations. CRO will cooperate with, in accordance with Section 10.4 below, any reasonable audit by CymaBay and make available to CymaBay for examination and duplication, during [*], all Records. All Records will be CymaBay Confidential Information. CRO will maintain all Records, including all computerized records and files, in a secure area reasonably protected from fire and theft. It will also take all reasonable steps to ensure that any clinical trial subject identifying or protected health information contained in the Records is secure and that no unauthorized individuals or entities are able to gain access to such information while under CRO's custody or control.

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10.2 Record Maintenance After Expiration or Termination. Upon the expiration or termination of this Agreement, all Records will be returned by CRO to CymaBay except as required by applicable law. The Records will be delivered to the location designated by CymaBay at CymaBay's expense. In no event will CRO dispose of Records without first giving CymaBay [*] prior written notice of its intent to dispose of the Records and, if CymaBay so requests, CRO will transfer such Records to CymaBay at CymaBay's expense. CRO will be entitled at its sole expense to retain copies of the Records reasonably necessary for regulatory purposes or to demonstrate the satisfaction of its obligations hereunder, all subject to the confidentiality obligations set forth in Section 5.

10.3 Regulatory Inspections. Upon request by any properly authorized representative of any Regulatory Authority of appropriate jurisdiction to have access to or verify any record, report, documentation or data relating to a Project, Services, a Statement of Work, or otherwise directly relating to CymaBay in the possession, custody or control of CRO, CRO will promptly notify CymaBay and will arrange access by such Regulatory Authority to CRO to the extent legally required for the purposes of verifying and/or copying any record, report, documentation or data pertaining to the a Study or Statement of Work. Upon notification of an impending inspection by the FDA or any other Regulatory Authority at CRO's premises, CRO will promptly notify CymaBay by telephone and will follow up with written notification of such inspection. Unless prohibited by the applicable Regulatory Authority, CymaBay will have the right, but not the obligation, to be present at any such inspection and to review and comment on any responses required. CRO will provide CymaBay with daily updates and summaries of such inspection as they pertain to CymaBay. CRO will promptly take steps necessary to correct any deficiencies noted by a Regulatory Authority during an inspection at no cost to CymaBay, if such deficiencies are the result of CRO's performance.

10.4 Audits. CymaBay and/or its designee, who [*], will have the right, at reasonable times during CRO's normal business hours, upon reasonable prior written notice to CRO of at least [*], to examine CRO's standard operating procedures, CRO's facilities where Services are performed, and Records to confirm that the Services are being performed in accordance with this Agreement, the relevant Statements of Work, the relevant Protocol, ICH-GCP, and applicable laws and regulations. [*] CRO will provide reasonable assistance, including making available members of its staff, to facilitate such and audits. CRO will promptly take all steps necessary to correct any deficiencies noted by CymaBay during an audit at no additional cost to CymaBay.

11. Miscellaneous.

11.1 Independent Contractor Relationship. The parties hereto are independent contractors, and nothing contained in this Agreement is intended, and will not be construed, to place the parties in the relationship of partners, principal and agent, employer/employee or joint venturer. Neither party will have any right, power or authority to bind or obligate the other, nor will either hold itself out as having such right, power or authority.

11.2 Use of Name. Except as required by valid order of a court or other governmental body having competent jurisdiction, or by applicable law, neither party will use the name or trademark of the other party in any advertising, sales promotional material, including its website, or press release without the prior written consent of the other party. Notwithstanding the

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foregoing, either party may use the name of the other party without such party's prior written consent to the extent necessary for (a) filings with regulatory or governmental agencies including, without limitation, the U.S. Securities & Exchange Commission or the FDA, (b) filing, prosecuting, or maintaining patent applications or patents relating to an Invention assigned to such party pursuant to the provisions of Section 6, (c) in connection with litigation, or (d) performing its obligations or exercising its rights under this Agreement.

11.3 **Force Majeure.** If either party will be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strike, lockouts, labor troubles, restrictive governmental or judicial orders or decrees, riots, insurrection, war, acts of God, inclement weather or other reason or cause reasonably beyond such party's control (each a "**Force Majeure**"), then performance of such act will be excused for the period of such Force Majeure. Any timelines affected by a Force Majeure will be extended for a period equal to that of the Force Majeure. The party incurring the Force Majeure will provide notice to the other of the commencement and termination of the Force Majeure, and will take reasonable, diligent efforts to remove the condition constituting such Force Majeure or to avoid its affects so as to resume performance as soon as practicable.

11.4 **Notices.** Any consent, notice, or report required or permitted to be given or made under this Agreement by one of the parties to the other (other than an invoice or Monthly Report covered by Section 2) will be in writing and will be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when delivered personally; (b) by overnight courier, upon written verification of receipt; or (c) by certified or registered mail, return receipt requested, upon verification of receipt. Such consent, notice, or report will be addressed to such other party at its address indicated below, or to such other address as the addressee will have last furnished in writing to the addressor in accordance with the requirements of this Section 11.4, and will be effective upon receipt by the addressee.

If to CymaBay:

For Communications:

[*]
CymaBay Therapeutics, Inc.
7999 Gateway Blvd., Ste. 130
Newark, CA 94560
Phone: [*]
[*]

For Accounts Payable:

Accounts Payable
7999 Gateway Blvd., Ste. 130
Newark, CA 94560
Phone: [*]
[*]

If to CRO:

Pharmaceutical Research Associates, Inc.
[*]
4130 ParkLake Avenue, Suite 400
Raleigh, NC 27612
Phone: (919) 786-8200

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

11.5 Severance. If any provision of this Agreement is found by a proper authority to be unenforceable, that provision will be severed and the remainder of this Agreement will continue in full force and effect. However, the parties hereto will renegotiate this Agreement in good faith to replace any unenforceable provision with a valid and enforceable one such that the objectives contemplated by the parties when entering this Agreement may be realized.

11.6 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 unless such party provides an express written and signed waiver as to a particular matter for a particular period of time.

11.7 Amendments. No amendment, change or modification to this Agreement or any Statements of Work will be effective unless in writing and executed by the parties hereto.

11.8 Assignment and Subcontracting; use of Affiliates.

- (a) This Agreement and all Statements of Work may not be assigned either party without other Party's prior written consent, which consent will not be unreasonably withheld; provided, however, that either Party may assign this Agreement without consent to a successor in interest to substantially all of the business of that Party to which the subject matter of this Agreement relates, whether by way of merger, acquisition, reorganization, spin-out or, in the case, of CymaBay, the grant of exclusive license rights in a product for which clinical development services are conducted by CRO under this Agreement, upon delivery to the other Party of notice of such assignment. Any attempted assignment that does not comply with the requirements of this Section 11.8(a) will be null and void.
- (b) [*]
- (c) The parties agree that any Affiliate of CRO may directly enter into a Statement of Work under this Agreement. Upon execution of a Statement of Work by an Affiliate of CRO, the Statement of Work will be incorporated into this Agreement by this reference, and the Statement of Work and this Agreement [*]

11.9 Governing Law. Resolution of all disputes arising out of or related to this Agreement or the performance, enforcement, breach, or termination of this Agreement and any remedies relating thereto, will be governed by and construed under the substantive laws of the State of New York without giving effect to any choice of law principles that would require the application of the laws of a different jurisdiction.

11.10 Construction; Headings. No provision of this Agreement will be interpreted against any party because that party or its legal counsel drafted the provision. The titles and headings of the Sections of this Agreement are for convenience only and are not intended to confer a separate legal obligation under the Agreement.

11.11 Counterparts and Facsimile Signatures. This Agreement, and any subsequent amendment(s), may be executed in counterparts and the counterparts, together, will constitute a single agreement. A facsimile transmission of this signed Agreement or a Statement of Work bearing a signature on behalf of a party will be legal and binding on such party.

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11.12 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes, as of the Effective Date, all prior negotiations, representations or agreements, either written or oral, with respect to the subject matter hereof.

11.13 Foreign Corrupt Practices Act Compliance. CRO represents that it has knowledge and understanding of the requirements of the Foreign Corrupt Practices Act of 1977, as amended. CRO hereby represents and warrants that neither it nor any of its Affiliates or personnel performing any Services will make any payments or gifts to foreign governments or related persons for the purpose of obtaining or retaining business for or with, or directing business to, any person in connection with the performance of Services. Accordingly, CRO agrees that no portion of monies paid or payable in connection with this Agreement, nor any other item of value, will, directly or indirectly, be paid, received, transferred, loaned, offered, promised or furnished to, or for the use of, any officer or employee of any foreign government department, agency, instrumentality or corporation thereof, or any political party or any official of such party or candidate for office, or any person acting for or on behalf of any of the foregoing, for the purpose of (a) inducing the recipient to misuse his or her official position to direct business wrongfully to CymaBay, CRO, or any other person, (b) influencing any act or decision of an official in his or her official capacity, including to obtain approvals for the conduct of CymaBay's clinical studies, (c) inducing an official to do or omit to do any act in violation of his or her lawful duty, (d) obtaining any improper advantage, or (e) inducing a foreign official to use his or her influence improperly to affect or influence any act or decision.

11.14 Fraud. CRO will promptly notify CymaBay in writing if it obtains information that any person has, or may have, engaged in the falsification of data (i.e., creating, altering, recording or omitting data in such a way that the data do not represent what actually occurred) in reporting the results of, or in the course of performing, recording, supervising or reviewing, a Project conducted under a Statement of Work.

11.15 Dispute Resolution. In the event a dispute relating to this Agreement or any Statement of Work arises between the Parties, the Parties will use all reasonable efforts to resolve the dispute through direct discussions [*]. The senior management of each Party is committed to respond to any such dispute.

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the parties hereto by their duly authorized officers as of the Effective Date.

CYMA BAY THERAPEUTICS, INC.

By: /s/ Sujal Shah

Name: Sujal Shah

Title: CFO

Date: 9-2-15

PHARMACEUTICAL RESEARCH ASSOCIATES, INC.

By: /s/ Michael Wolfgang

Name: Michael Wolfgang

Title: Vice President of Finance

Date: 9/3/2015

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Statement of Work Number 1
Protocol #: CB8025-21428
PRA Project ID: CMY8025X-MBX825

This Statement of Work Number 1 (the "Statement of Work") is made and entered into on July 14, 2015, (the "Effective Date"), by and between **CymaBay Therapeutics, Inc.**, a Delaware corporation, with its principal place of business at 7999 Gateway Blvd., Ste. 130, Newark, CA 94560 (hereinafter referred to as "CymaBay" or "Sponsor") and **Pharmaceutical Research Associates, Inc.**, a corporation of the Commonwealth of Virginia, together with its affiliates, with offices at 4130 ParkLake Avenue, Suite 400, Raleigh, NC 27612 (hereinafter referred to as "PRA").

WITNESSETH

WHEREAS, CymaBay and PRA have entered into that certain Master Services Agreement dated the 2nd day of September, 2015 (hereinafter referred to as the "Master Agreement"); and

WHEREAS, pursuant to the Master Agreement, PRA has agreed to perform certain Services in accordance with Statements of Work from time to time entered into by the Parties, as more fully provided in Section 1.2 of the Master Agreement, and Sponsor and PRA now desire to enter into such a Statement of Work.

WHEREAS, PRA and Sponsor desire that PRA provide certain Services with respect to a Phase 2 study of CymaBay's proprietary drug referred to as MBX-8025 ("Study Drug") as set out in Protocol CB8025-21428 currently titled: "A 12-week, double-blind, randomized, placebo-controlled, Phase 2 study to evaluate the effects of two doses of MBX-8025 in subjects with Primary Biliary Cirrhosis (PBC) and inadequate response to UrsoDeoxyCholic Acid (UDCA)" (the "Study"), which is incorporated herein by reference.

WHEREAS, PRA and Sponsor have entered into a Letter of Intent dated the 14th day of July, 2015, (the "LOI"), for performance of certain initial services with respect to the Study. This Statement of Work now supersedes the LOI unless stated otherwise herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereby agree as follows:

1. Unless otherwise defined herein, initially capitalized terms used in this Statement of Work will have the meaning ascribed to such terms in the Master Agreement.

2. Project Specifications. PRA will perform Services described in the Project Specifications, attached hereto as Appendix A, in accordance with the Project Schedule, attached hereto as Appendix B and any other documents attached to this Statement of

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Work ("Services"). The regulatory obligations of CymaBay that are transferred to PRA in connection with the Study, as required by 21 C.F.R. § 312.52, are set forth in the Transfer of Sponsor's Regulatory Obligations, attached hereto as Appendix F.

2. Compensation. For performance of these Services, Sponsor will pay to PRA the amounts described in the Budget for Services and Pass-Through Costs set forth in Appendix C, which amounts will be payable pursuant to the Payment Schedule set forth in Appendix D.

3. Term and Termination. The term of this Statement of Work will commence upon the Effective Date above and will continue until completion of the Services described in Appendix A, provided, however, that either party may terminate this Statement of Work as permitted in and in accordance with Section 3, Term and Termination, of the Master Agreement.

4. Designated Contact Persons and Key Personnel. The PRA Project Manager and Key Personnel who will oversee the Services in accordance with the Master Agreement are identified in Appendix E, Designated Contact Persons and Key Personnel.

5. Incorporation by Reference; Conflict. The provisions of the Master Agreement are hereby expressly incorporated by reference into and made a part of this Statement of Work. In the event of a conflict between the terms and conditions of this Statement of Work and those of the Master Agreement, the terms of the Master Agreement will take precedence and control.

IN WITNESS WHEREOF, the parties have hereunto signed this Statement of Work effective as of the Effective Date.

Pharmaceutical Research Associates, Inc.

/s/ Michael Wolfgang

Name

Vice President of Finance

Title

10/05/2015

Date

CymaBay Therapeutics, Inc.

/s/ Sujal Shah

Name

CFO

Title

10-5-15

Date

List of Appendices

- Appendix A: Project Specifications
- Appendix B: Project Schedule
- Appendix C: Budget for Services and Pass-Through Budget
- Appendix D: Payment Schedule
- Appendix E: Designated Contact Persons and Key Personnel Designation
- Appendix F: Transfer of Sponsor's Regulatory Obligations

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Appendix A
Project Specifications

[*]

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Appendix B
Project Schedule

[*]

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Appendix C
Budget for Services and Pass-Through Costs Budget

[*]

Total Services & Expenses

The total estimated budget is \$6,229,000.73, [*].

[*]

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Appendix D
Payment Schedule

Services Direct Fees:

[*]

Pass-Through Costs (excluding Investigator Grants):

[*]

Investigator Grants:

[*]

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Appendix E
Designated Contact Persons and Key Personnel

PRA:

[*]

CYMABAY:

[*]

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Appendix F
Transfer of Sponsor's Regulatory Obligations

[*]

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (as the same may from time to time be amended, modified, supplemented or restated, this “**Agreement**”) dated as of August 7, 2015 (the “**Effective Date**”) among OXFORD FINANCE LLC, a Delaware limited liability company with an office located at 133 North Fairfax Street, Alexandria, Virginia 22314 (“**Oxford**”), as collateral agent (in such capacity, “**Collateral Agent**”), the Lenders listed on Schedule 1.1 hereof or otherwise a party hereto from time to time including Oxford in its capacity as a Lender and SILICON VALLEY BANK, a California corporation with an office located at 3003 Tasman Drive, Santa Clara, CA 95054 (“**Bank**” or “**SVB**”) (each a “**Lender**” and collectively, the “**Lenders**”), and CYMABAY THERAPEUTICS, INC., a Delaware corporation with offices located at 7999 Gateway Blvd., Suite 130, Newark, CA 94560 (“**Borrower**”), provides the terms on which the Lenders shall lend to Borrower and Borrower shall repay the Lenders. The parties agree as follows:

1. ACCOUNTING AND OTHER TERMS

1.1 Accounting terms not defined in this Agreement shall be construed in accordance with GAAP. Calculations and determinations must be made in accordance with GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. All references to “**Dollars**” or “**\$**” are United States Dollars, unless otherwise noted.

2. LOANS AND TERMS OF PAYMENT

2.1 Promise to Pay. Borrower hereby unconditionally promises to pay each Lender, the outstanding principal amount of all Term Loans advanced to Borrower by such Lender and accrued and unpaid interest thereon and any other amounts due hereunder as and when due in accordance with this Agreement.

2.2 Term Loans.

(a) Availability.

(i) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, to make a term loan to Borrower on the Effective Date in an aggregate amount equal to Ten Million Dollars (\$10,000,000.00) according to each Lender’s Term A Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a “**Term A Loan**”, and collectively as the “**Term A Loans**”). After repayment, no Term A Loan may be re-borrowed.

(ii) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, during the Second Draw Period, to make a term loan to Borrower in an aggregate amount equal to Five Million Dollars (\$5,000,000.00) according to each Lender’s Term B Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a “**Term B Loan**”, and collectively as the “**Term B Loans**”; each Term A Loan or Term B Loan is hereinafter referred to singly as a “**Term Loan**” and the Term A Loans and the Term B Loans are hereinafter referred to collectively as the “**Term Loans**”). After repayment, no Term B Loan may be re-borrowed.

(b) Repayment. Borrower shall make monthly payments of interest only commencing on the first (1st) Payment Date following the Funding Date of each Term Loan, and continuing on the Payment Date of each successive month thereafter through and including the Payment Date immediately preceding the Amortization Date. Borrower agrees to pay, on the Funding Date of each Term Loan, any initial partial monthly interest payment otherwise due for the period between the Funding Date of such Term Loan and the first Payment Date thereof. Commencing on the Amortization Date, and continuing on the Payment Date of each month thereafter, Borrower shall make consecutive equal monthly payments of principal and interest, in arrears, to each Lender, as calculated by Collateral Agent (which calculations shall be deemed correct absent manifest error) based upon: (1) the amount of such Lender’s Term Loan, (2) the effective rate of interest, as determined in Section 2.3(a), and (3) a repayment schedule equal to thirty six (36) months. All unpaid principal and accrued and unpaid interest with respect to each Term Loan is due and payable in full on the Maturity Date. Each Term Loan may only be prepaid in accordance with Sections 2.2(c) and 2.2(d).

(c) Mandatory Prepayments. If the Term Loans are accelerated following the occurrence of an Event of Default, Borrower shall immediately pay to Lenders, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of: (i) all outstanding principal of the Term Loans plus accrued and unpaid interest thereon through the prepayment date, (ii) the Final Payment, (iii) the Prepayment Fee, plus (iv) all other Obligations that are due and payable, including Lenders' Expenses and interest at the Default Rate with respect to any past due amounts. Notwithstanding (but without duplication with) the foregoing, on the Maturity Date, if the Final Payment had not previously been paid in full in connection with the prepayment of the Term Loans in full, Borrower shall pay to Collateral Agent, for payment to each Lender in accordance with its respective Pro Rata Share, the Final Payment in respect of the Term Loan(s).

(d) Permitted Prepayment of Term Loans. Borrower shall have the option to prepay all, but not less than all, of the Term Loans advanced by the Lenders under this Agreement, provided Borrower (i) provides written notice to Collateral Agent of its election to prepay the Term Loans at least thirty (30) days prior to such prepayment, and (ii) pays to the Lenders on the date of such prepayment, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of (A) all outstanding principal of the Term Loans plus accrued and unpaid interest thereon through the prepayment date, (B) the Final Payment, (C) the Prepayment Fee, plus (D) all other Obligations that are due and payable, including Lenders' Expenses and interest at the Default Rate with respect to any past due amounts.

2.3 Payment of Interest on the Credit Extensions.

(a) Interest Rate. Subject to Section 2.3(b), the principal amount outstanding under the Term Loans shall accrue interest at a fixed per annum rate (which rate shall be fixed for the duration of the applicable Term Loan) equal to the Basic Rate, determined by Collateral Agent on the Funding Date of the applicable Term Loan, which interest shall be payable monthly in arrears in accordance with Sections 2.3(b) and 2.3(e). Interest shall accrue on each Term Loan commencing on, and including, the Funding Date of such Term Loan, and shall accrue on the principal amount outstanding under such Term Loan through and including the day on which such Term Loan is paid in full.

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, Obligations shall accrue interest at a fixed per annum rate equal to the rate that is otherwise applicable thereto plus five percentage points (5.00%) (the "**Default Rate**"). Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Collateral Agent.

(c) 360-Day Year. Interest shall be computed on the basis of a three hundred sixty (360) day year consisting of twelve (12) months of thirty (30) days.

(d) Debit of Accounts. Collateral Agent and each Lender may debit (or ACH) any deposit accounts, maintained by Borrower or any of its Subsidiaries, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes the Lenders under the Loan Documents when due. Any such debits (or ACH activity) shall not constitute a set-off.

(e) Payments. Except as otherwise expressly provided herein, all payments by Borrower under the Loan Documents shall be made to the respective Lender to which such payments are owed, at such Lender's office in immediately available funds on the date specified herein. Unless otherwise provided, interest is payable monthly on the Payment Date of each month. Payments of principal and/or interest received after 12:00 noon Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue until paid. All payments to be made by Borrower hereunder or under any other Loan Document, including payments of principal and interest, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds.

2.4 Secured Promissory Notes. The Term Loans shall be evidenced by a Secured Promissory Note or Notes in the form attached as Exhibit D hereto (each a “**Secured Promissory Note**”), and shall be repayable as set forth in this Agreement. Borrower irrevocably authorizes each Lender to make or cause to be made, on or about the Funding Date of any Term Loan or at the time of receipt of any payment of principal on such Lender’s Secured Promissory Note, an appropriate notation on such Lender’s Secured Promissory Note Record reflecting the making of such Term Loan or (as the case may be) the receipt of such payment. The outstanding amount of each Term Loan set forth on such Lender’s Secured Promissory Note Record shall be prima facie evidence of the principal amount thereof owing and unpaid to such Lender, but the failure to record, or any error in so recording, any such amount on such Lender’s Secured Promissory Note Record shall not limit or otherwise affect the obligations of Borrower under any Secured Promissory Note or any other Loan Document to make payments of principal of or interest on any Secured Promissory Note when due. Upon receipt of an affidavit of an officer of a Lender as to the loss, theft, destruction, or mutilation of its Secured Promissory Note, Borrower shall issue, in lieu thereof, a replacement Secured Promissory Note in the same principal amount thereof and of like tenor.

2.5 Fees. Borrower shall pay to Collateral Agent:

(a) Facility Fee. A fully earned, non-refundable facility fee of One Hundred Fifty Thousand Dollars (\$150,000.00) to be shared between the Lenders pursuant to their respective Commitment Percentages payable on the Effective Date, receipt of which Collateral Agent hereby acknowledges;

(b) Final Payment. The Final Payment, when due hereunder, to be shared between the Lenders in accordance with their respective Pro Rata Shares;

(c) Prepayment Fee. The Prepayment Fee, when due hereunder, to be shared between the Lenders in accordance with their respective Pro Rata Shares;

(d) Lenders’ Expenses. All Lenders’ Expenses (including reasonable attorneys’ fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due.

2.6 Withholding. Payments received by the Lenders from Borrower hereunder will be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any governmental authority (including any interest, additions to tax or penalties applicable thereto). Specifically, however, if at any time any Governmental Authority, applicable law, regulation or international agreement requires Borrower to make any withholding or deduction from any such payment or other sum payable hereunder to the Lenders, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment or other sum payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, each Lender receives a net sum equal to the sum which it would have received had no withholding or deduction been required and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority. Borrower will, upon request, furnish the Lenders with proof reasonably satisfactory to the Lenders indicating that Borrower has made such withholding payment; provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. The agreements and obligations of Borrower contained in this Section 2.6 shall survive the termination of this Agreement.

3. CONDITIONS OF LOANS

3.1 Conditions Precedent to Initial Credit Extension. Each Lender’s obligation to make a Term A Loan is subject to the condition precedent that Collateral Agent and each Lender shall consent to or shall have received, in form and substance satisfactory to Collateral Agent and each Lender, such documents, and completion of such other matters, as Collateral Agent and each Lender may reasonably deem necessary or appropriate, including, without limitation:

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- (a) original Loan Documents, each duly executed by Borrower and each Subsidiary, as applicable;
- (b) duly executed original Control Agreements with respect to any Collateral Accounts maintained by Borrower or any of its Subsidiaries;
- (c) duly executed original Secured Promissory Notes in favor of each Lender according to its Term A Loan Commitment Percentage;
- (d) the Operating Documents and good standing certificates of Borrower and its Subsidiaries certified by the Secretary of State (or equivalent agency) of Borrower's and such Subsidiaries' jurisdiction of organization or formation and each jurisdiction in which Borrower and each Subsidiary is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Effective Date;
- (e) a completed Perfection Certificate for Borrower and each of its Subsidiaries;
- (f) the Annual Projections, for the current calendar year;
- (g) duly executed original officer's certificate for Borrower and each Subsidiary that is a party to the Loan Documents, in a form acceptable to Collateral Agent and the Lenders;
- (h) certified copies, dated as of date no earlier than thirty (30) days prior to the Effective Date, of financing statement searches, as Collateral Agent shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;
- (i) subject to the Post Closing Letter, a landlord's consent executed in favor of Collateral Agent in respect of all of Borrower's and each Subsidiaries' leased locations;
- (j) subject to the Post Closing Letter, a bailee waiver executed in favor of Collateral Agent in respect of each third party bailee where Borrower or any Subsidiary maintains Collateral having a book value in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00);
- (k) a duly executed legal opinion of counsel to Borrower dated as of the Effective Date;
- (l) evidence that (i) the Liens securing the Existing Indebtedness will be terminated and (ii) the documents and/or filings evidencing the perfection of such Liens, including without limitation any financing statements and/or control agreements, have or will, concurrently with the initial Credit Extension, be terminated;
- (m) a payoff letter from Bank and Collateral Agent, in respect of the Existing Indebtedness;
- (n) evidence satisfactory to Collateral Agent and the Lenders that the insurance policies required by Section 6.5 hereof are in full force and effect, together with appropriate evidence showing loss payable and/or additional insured clauses or endorsements in favor of Collateral Agent, for the ratable benefit of the Lenders;
- (o) a copy of any applicable Registration Rights Agreement or Investors' Rights Agreement and any amendments thereto; and
- (p) payment of the fees and Lenders' Expenses then due as specified in Section 2.5 hereof.

3.2 Conditions Precedent to all Credit Extensions. The obligation of each Lender to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

(a) receipt by (i) the Lenders of an executed Disbursement Letter in the form of Exhibit B-1 attached hereto; and (ii) SVB of an executed Loan Payment/Advance Request Form in the form of Exhibit B-2 attached hereto;

(b) the representations and warranties in Section 5 hereof shall be true, accurate and complete in all material respects on the date of the Disbursement Letter (and the Loan Payment/Advance Request Form) and on the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in Section 5 hereof are true, accurate and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date;

(c) in such Lender's sole discretion, there has not been any Material Adverse Change or any material adverse deviation by Borrower from the Annual Projections of Borrower presented to and accepted by Collateral Agent and each Lender;

(d) to the extent not delivered at the Effective Date, duly executed original Secured Promissory Notes and Warrants, in number, form and content acceptable to each Lender, and in favor of each Lender according to its Commitment Percentage, with respect to each Credit Extension made by such Lender after the Effective Date; and

(e) payment of the fees and Lenders' Expenses then due as specified in Section 2.5 hereof.

3.3 Covenant to Deliver. Borrower agrees to deliver to Collateral Agent and the Lenders each item required to be delivered to Collateral Agent under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Collateral Agent or any Lender of any such item shall not constitute a waiver by Collateral Agent or any Lender of Borrower's obligation to deliver such item, and any such Credit Extension in the absence of a required item shall be made in each Lender's sole discretion.

3.4 Procedures for Borrowing. Subject to the prior satisfaction of all other applicable conditions to the making of a Term Loan set forth in this Agreement, to obtain a Term Loan, Borrower shall notify the Lenders (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 12:00 noon Eastern time three (3) Business Days prior to the date the Term Loan is to be made. Together with any such electronic, facsimile or telephonic notification, Borrower shall deliver to the Lenders by electronic mail or facsimile a completed Disbursement Letter (and the Loan Payment/Advance Request Form, with respect to SVB) executed by a Responsible Officer or his or her designee. The Lenders may rely on any telephone notice given by a person whom a Lender reasonably believes is a Responsible Officer or designee. On the Funding Date, each Lender shall credit and/or transfer (as applicable) to the Designated Deposit Account, an amount equal to its Term Loan Commitment.

4. CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest. Borrower hereby grants Collateral Agent, for the ratable benefit of the Lenders, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Collateral Agent, for the ratable benefit of the Lenders, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral, subject only to Permitted Liens that are permitted by the terms of this Agreement to have priority to Collateral Agent's Lien. If Borrower shall acquire a commercial tort claim (as defined in the Code), Borrower, shall promptly notify Collateral Agent in a writing signed by Borrower, as the case may be, of the general details thereof (and further details as may be required by Collateral Agent) and grant to Collateral Agent, for the ratable benefit of the Lenders, in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Collateral Agent.

Borrower acknowledges that it previously has entered, and/or may in the future enter, into Bank Services Agreements with Bank. Regardless of the terms of any Bank Services Agreement, Borrower agrees that any amounts Borrower owes Bank thereunder shall be deemed to be Obligations hereunder and that it is the intent of Borrower and Bank to have all such Obligations secured by the first priority perfected security interest in the Collateral granted herein (subject only to Permitted Liens that may have superior priority to Bank's Lien in this Agreement).

If this Agreement is terminated, Collateral Agent's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations) and at such time as the Lenders' obligation to make Credit Extensions has terminated, Collateral Agent shall, at the sole cost and expense of Borrower, release its Liens in the Collateral and all rights therein shall revert to Borrower. In the event (x) all Obligations (other than inchoate indemnity obligations), except for Bank Services, are satisfied in full, and (y) this Agreement is terminated, Bank shall terminate the security interest granted herein upon Borrower providing cash collateral acceptable to Bank in its good faith business judgment for Bank Services, if any. In the event such Bank Services consist of outstanding Letters of Credit, Borrower shall provide to Bank cash collateral in an amount equal to (x) if such Letters of Credit are denominated in Dollars, then one hundred five percent (105%); and (y) if such Letters of Credit are denominated in a Foreign Currency, then one hundred ten percent (110%), of the Dollar Equivalent of the face amount of all such Letters of Credit plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment), to secure all of the Obligations relating to such Letters of Credit.

4.2 Authorization to File Financing Statements. Borrower hereby authorizes Collateral Agent to file financing statements or take any other action required to perfect Collateral Agent's security interests in the Collateral, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Collateral Agent's interest or rights under the Loan Documents, including a notice that any disposition of the Collateral, except to the extent permitted by the terms of this Agreement, by Borrower, or any other Person, shall be deemed to violate the rights of Collateral Agent under the Code.

5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Collateral Agent and the Lenders as follows:

5.1 Due Organization, Authorization: Power and Authority. Borrower and each of its Subsidiaries is duly existing and in good standing as a Registered Organization in its jurisdictions of organization or formation and Borrower and each of its Subsidiaries is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its businesses or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Change. In connection with this Agreement, Borrower and each of its Subsidiaries has delivered to Collateral Agent a completed perfection certificate signed by an officer of Borrower or such Subsidiary (each a "**Perfection Certificate**" and collectively, the "**Perfection Certificates**"). Borrower represents and warrants that (a) Borrower and each of its Subsidiaries' exact legal name is that which is indicated on its respective Perfection Certificate and on the signature page of each Loan Document to which it is a party; (b) Borrower and each of its Subsidiaries is an organization of the type and is organized in the jurisdiction set forth on its respective Perfection Certificate; (c) each Perfection Certificate accurately sets forth each of Borrower's and its Subsidiaries' organizational identification number or accurately states that Borrower or such Subsidiary has none; (d) each Perfection Certificate accurately sets forth Borrower's and each of its Subsidiaries' place of business, or, if more than one, its chief executive office as well as Borrower's and each of its Subsidiaries' mailing address (if different than its chief executive office); (e) Borrower and each of its Subsidiaries (and each of its respective predecessors) have not, in the past five (5) years, changed its jurisdiction of organization, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificates pertaining to Borrower and each of its Subsidiaries, is accurate and complete (it being understood and agreed that Borrower and each of its Subsidiaries may from time to time update certain information in the Perfection Certificates (including the information set forth in clause (d) above) after the Effective Date to the extent permitted by one or more specific provisions in this Agreement);

such updated Perfection Certificates subject to the review and approval of Collateral Agent. If Borrower or any of its Subsidiaries is not now a Registered Organization but later becomes one, Borrower shall notify Collateral Agent of such occurrence and provide Collateral Agent with such Person's organizational identification number within five (5) Business Days of receiving such organizational identification number.

The execution, delivery and performance by Borrower and each of its Subsidiaries of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's or such Subsidiaries' organizational documents, including its respective Operating Documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law applicable thereto, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or such Subsidiary, or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) or are being obtained pursuant to Section 6.1(b), or (v) constitute an event of default under any material agreement by which Borrower or any of such Subsidiaries, or their respective properties, is bound. Neither Borrower nor any of its Subsidiaries is in default under any agreement to which it is a party or by which it or any of its assets is bound in which such default could reasonably be expected to have a Material Adverse Change.

5.2 Collateral.

(a) Borrower and each its Subsidiaries have good title to, have rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien under the Loan Documents, free and clear of any and all Liens except Permitted Liens, and neither Borrower nor any of its Subsidiaries have any Deposit Accounts, Securities Accounts, Commodity Accounts or other investment accounts other than the Collateral Accounts or the other investment accounts, if any, described in the Perfection Certificates delivered to Collateral Agent in connection herewith with respect of which Borrower or such Subsidiary has given Collateral Agent notice and taken such actions as are necessary to give Collateral Agent a perfected security interest therein. The Accounts are bona fide, existing obligations of the Account Debtors.

(b) On the Effective Date, and except as disclosed on the Perfection Certificate (i) the Collateral is not in the possession of any third party bailee (such as a warehouse), and (ii) no such third party bailee possesses components of the Collateral in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00). None of the components of the Collateral shall be maintained at locations other than as disclosed in the Perfection Certificates on the Effective Date or as permitted pursuant to Section 6.12.

(c) All Inventory is in all material respects of good and marketable quality, free from material defects.

(d) Borrower and each of its Subsidiaries is the sole owner of the Intellectual Property each respectively purports to own, except for (a) non-exclusive licenses granted to its customers in the ordinary course of business, (b) over-the-counter software that is commercially available to the public, and (c) material Intellectual Property licensed to Borrower and noted on the Perfection Certificate free and clear of all Liens other than Permitted Liens. Except as noted on the Perfection Certificates, neither Borrower nor any of its Subsidiaries is a party to, nor is bound by, any material license or other material agreement with respect to which Borrower or such Subsidiary is the licensee that (i) prohibits or otherwise restricts Borrower or its Subsidiaries from granting a security interest in Borrower's or such Subsidiaries' interest in such material license or material agreement or any other property, or (ii) for which a default under or termination of could interfere with Collateral Agent's or any Lender's right to sell any Collateral. Borrower shall provide written notice to Collateral Agent and each Lender within ten (10) days of Borrower or any of its Subsidiaries entering into or becoming bound by any license or agreement with respect to which Borrower or any Subsidiary is the licensee (other than over the counter software that is commercially available to the public).

5.3 Litigation. Except as disclosed (i) on the Perfection Certificates, or (ii) in accordance with Section 6.9 hereof, there are no actions, suits, investigations, or proceedings pending or, to the knowledge of the Responsible Officers, threatened in writing by or against Borrower or any of its Subsidiaries involving more than Two Hundred Fifty Thousand Dollars (\$250,000.00).

5.4 No Material Deterioration in Financial Condition; Financial Statements. All consolidated financial statements for Borrower and its Subsidiaries, delivered to Collateral Agent fairly present, in conformity with GAAP, in all material respects the consolidated financial condition of Borrower and its Subsidiaries, and the consolidated results of operations of Borrower and its Subsidiaries as of the dates and for the periods presented. There has not been any material deterioration in the consolidated financial condition of Borrower and its Subsidiaries since the date of the most recent financial statements submitted to any Lender.

5.5 Solvency. Borrower and each of its Subsidiaries is Solvent.

5.6 Regulatory Compliance. Neither Borrower nor any of its Subsidiaries is an “investment company” or a company “controlled” by an “investment company” under the Investment Company Act of 1940, as amended. Neither Borrower nor any of its Subsidiaries is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower and each of its Subsidiaries has complied in all material respects with the Federal Fair Labor Standards Act. Neither Borrower nor any of its Subsidiaries is a “holding company” or an “affiliate” of a “holding company” or a “subsidiary company” of a “holding company” as each term is defined and used in the Public Utility Holding Company Act of 2005. Neither Borrower nor any of its Subsidiaries has violated any laws, ordinances or rules, the violation of which could reasonably be expected to have a Material Adverse Change. Neither Borrower’s nor any of its Subsidiaries’ properties or assets has been used by Borrower or such Subsidiary or, to Borrower’s knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with applicable laws. Borrower and each of its Subsidiaries has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

None of Borrower, any of its Subsidiaries, or any of Borrower’s or its Subsidiaries’ Affiliates or any of their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law, (ii) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, or (iii) is a Blocked Person. None of Borrower, any of its Subsidiaries, or to the knowledge of Borrower and any of their Affiliates or agents, acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

5.7 Investments. Neither Borrower nor any of its Subsidiaries owns any stock, shares, partnership interests or other equity securities except for Permitted Investments.

5.8 Tax Returns and Payments; Pension Contributions. Borrower and each of its Subsidiaries has timely filed or have timely obtained extensions for filing all required tax returns and reports, and Borrower and each of its Subsidiaries, has timely paid all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower and such Subsidiaries, in all jurisdictions in which Borrower or any such Subsidiary is subject to taxes, including the United States, unless such taxes are being contested in accordance with the following sentence. Borrower and each of its Subsidiaries, may defer payment of any contested taxes, provided that Borrower or such Subsidiary, (a) in good faith contests its obligation to pay the taxes by appropriate proceedings promptly and diligently instituted and conducted, (b) notifies Collateral Agent in writing of the commencement of, and any material development in, the proceedings, and (c) posts bonds or takes any other steps required to prevent the Governmental Authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a “Permitted Lien.” Neither Borrower nor any of its Subsidiaries is aware of any claims or adjustments proposed for any of Borrower’s or such Subsidiaries’, prior tax years which could result in additional taxes becoming due and payable by Borrower or its Subsidiaries. Borrower and each of its Subsidiaries have paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and neither Borrower nor any of its Subsidiaries have, withdrawn from participation in, and have not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower or its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

5.9 Use of Proceeds. Borrower shall use the proceeds of the Credit Extensions solely as working capital and to fund its general business requirements in accordance with the provisions of this Agreement, and not for personal, family, household or agricultural purposes. A portion of the proceeds of the Term A Loans shall be used by Borrower to repay the Existing Indebtedness in full on the Effective Date.

5.10 Full Disclosure. No written representation, warranty or other statement of Borrower or any of its Subsidiaries in any certificate or written statement given to Collateral Agent or any Lender, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Collateral Agent or any Lender, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

5.11 Definition of "Knowledge." For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower's knowledge or awareness, to the "best of" Borrower's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

6. AFFIRMATIVE COVENANTS

Borrower shall, and shall cause each of its Subsidiaries to, do all of the following:

6.1 Government Compliance.

(a) Maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of organization and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Change. Comply with all laws, ordinances and regulations to which Borrower or any of its Subsidiaries is subject, the noncompliance with which could reasonably be expected to have a Material Adverse Change.

(b) Obtain and keep in full force and effect, all of the material Governmental Approvals necessary for the performance by Borrower and its Subsidiaries of their respective businesses and obligations under the Loan Documents and the grant of a security interest to Collateral Agent for the ratable benefit of the Lenders, and each Lender, in all of the Collateral. Borrower shall promptly provide copies to Collateral Agent of any material Governmental Approvals obtained by Borrower or any of its Subsidiaries.

6.2 Financial Statements, Reports, Certificates.

(a) Deliver to each Lender:

(i) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated and consolidating balance sheet, income statement and cash flow statement covering the consolidated operations of Borrower and its Subsidiaries for such month certified by a Responsible Officer and in a form reasonably acceptable to Collateral Agent;

(ii) as soon as available, but no later than ninety five (95) days after the last day of Borrower's fiscal year or within five (5) days of filing with the SEC, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Collateral Agent in its reasonable discretion;

(iii) as soon as available after approval thereof by Borrower's Board of Directors, but no later than sixty (60) days after the last day of each of Borrower's fiscal years, Borrower's annual financial projections for the entire current fiscal year as approved by Borrower's Board of Directors, which such annual financial projections shall be set forth in a quarter-by-quarter format (such annual financial projections as originally

delivered to Collateral Agent and the Lenders are referred to herein as the “**Annual Projections**”; provided that, any revisions of the Annual Projections approved by Borrower’s Board of Directors shall be delivered to Collateral Agent and the Lenders no later than seven (7) days after such approval);

(iv) within five (5) days of delivery, copies of all statements, reports and notices made available to Borrower’s security holders or holders of Subordinated Debt;

(v) within five (5) days of filing, all reports on Form 10-K, 10-Q and 8-K filed with the Securities and Exchange Commission,

(vi) prompt notice of any material amendments of or other changes to the Operating Documents of Borrower or any of its Subsidiaries;

(vii) prompt notice of any event that could reasonably be expected to materially and adversely affect the value of the Intellectual Property;

(viii) as soon as available, but no later than thirty (30) days after the last day of each month, copies of the month-end account statements for each Collateral Account maintained by Borrower or its Subsidiaries, which statements may be provided to Collateral Agent and each Lender by Borrower or directly from the applicable institution(s), and

(ix) other information as reasonably requested by Collateral Agent or any Lender.

Notwithstanding the foregoing, documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower’s website on the internet at Borrower’s website address.

(b) Concurrently with the delivery of the financial statements specified in Section 6.2(a)(i) above but no later than thirty (30) days after the last day of each month, deliver to each Lender, a duly completed Compliance Certificate signed by a Responsible Officer.

(c) Keep proper books of record and account in accordance with GAAP in all material respects, in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities. Borrower shall, and shall cause each of its Subsidiaries to, allow, at the sole cost of Borrower, Collateral Agent or any Lender, during regular business hours upon reasonable prior notice (provided that no notice shall be required when an Event of Default has occurred and is continuing), to visit and inspect any of its properties, to examine and make abstracts or copies from any of its books and records, and to conduct a collateral audit and analysis of its operations and the Collateral. Such audits shall be conducted no more often than twice every year unless (and more frequently if) an Event of Default has occurred and is continuing.

6.3 Inventory; Returns. Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower, or any of its Subsidiaries, and their respective Account Debtors shall follow Borrower’s, or such Subsidiary’s, customary practices as they exist at the Effective Date. Borrower must promptly notify Collateral Agent and the Lenders of all returns, recoveries, disputes and claims that involve more than One Hundred Thousand Dollars (\$100,000.00) individually or in the aggregate in any calendar year.

6.4 Taxes; Pensions. Timely file and require each of its Subsidiaries to timely file, all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely file, all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower or its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.8 hereof, and shall deliver to Lenders, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with the terms of such plans.

6.5 Insurance. Keep Borrower's and its Subsidiaries' business and the Collateral insured for risks and in amounts standard for companies in Borrower's and its Subsidiaries' industry and location and as Collateral Agent may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to Collateral Agent and Lenders. All property policies shall have a lender's loss payable endorsement showing Collateral Agent as lender loss payee and waive subrogation against Collateral Agent, and all liability policies shall show, or have endorsements showing, Collateral Agent, as additional insured. The Collateral Agent shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral, and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Collateral Agent, that it will give the Collateral Agent twenty (20) days prior written notice before any such policy or policies shall be materially altered or canceled (ten (10) days for nonpayment of premium). At Collateral Agent's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Collateral Agent's option, be payable to Collateral Agent, for the ratable benefit of the Lenders, on account of the Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy up to Two Hundred Fifty Thousand Dollars (\$250,000.00) with respect to any loss, but not exceeding Five Hundred Thousand Dollars (\$500,000.00), in the aggregate for all losses under all casualty policies in any one year, toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Collateral Agent has been granted a first priority security interest, and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Collateral Agent, be payable to Collateral Agent, for the ratable benefit of the Lenders, on account of the Obligations. If Borrower or any of its Subsidiaries fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons, Collateral Agent and/or any Lender may make, at Borrower's expense, all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Collateral Agent or such Lender deems prudent.

6.6 Operating Accounts.

(a) Maintain all of Borrower's and its Subsidiaries' primary Collateral Accounts with Bank or its Affiliates in accounts which are subject to a Control Agreement in favor of Collateral Agent; which accounts shall represent, (1) with respect to Borrower's and its Subsidiaries' primary Deposit Accounts, Commodity Account or any other bank account (other than Securities Accounts) (collectively, "Operating Accounts"), at least eighty five percent (85.0%) of the dollar value of Borrower's and such Subsidiaries Operating Accounts at all financial institutions and, (2) with respect to Borrower's and its Subsidiaries' primary Securities Accounts, the lesser of (i) sixty percent (60.0%) of the dollar value of Borrower's and such Subsidiaries Securities Accounts at all financial institutions and (ii) an aggregate amount of Fifty Million Dollars (\$50,000,000.00).

(b) Borrower shall provide Collateral Agent five (5) days' prior written notice before Borrower or any of its Subsidiaries establishes any Collateral Account at or with any Person other than Bank or its Affiliates. In addition, for each Collateral Account that Borrower or any of its Subsidiaries, at any time maintains, Borrower or such Subsidiary shall cause the applicable bank or financial institution at or with which such Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Collateral Agent's Lien in such Collateral Account in accordance with the terms hereunder prior to the establishment of such Collateral Account, which Control Agreement may not be terminated without prior written consent of Collateral Agent. The provisions of the previous sentence shall not apply to deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's, or any of its Subsidiaries', employees and identified to Collateral Agent by Borrower as such in the Perfection Certificates.

(c) Neither Borrower nor any of its Subsidiaries shall maintain any Collateral Accounts except Collateral Accounts maintained in accordance with Sections 6.6(a) and (b).

6.7 Protection of Intellectual Property Rights. Borrower and each of its Subsidiaries shall: (a) use commercially reasonable efforts to protect, defend and maintain the validity and enforceability of its Intellectual Property that is material to Borrower's business; (b) promptly advise Collateral Agent in writing of material

infringement by a third party of its Intellectual Property; and (c) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Collateral Agent's prior written consent.

6.8 Litigation Cooperation. Commencing on the Effective Date and continuing through the termination of this Agreement, make available to Collateral Agent and the Lenders, without expense to Collateral Agent or the Lenders, Borrower and each of Borrower's officers, employees and agents and Borrower's Books, to the extent that Collateral Agent or any Lender may reasonably deem them necessary to prosecute or defend any third-party suit or proceeding instituted by or against Collateral Agent or any Lender with respect to any Collateral or relating to Borrower.

6.9 Notices of Litigation and Default. Borrower will give prompt written notice to Collateral Agent and the Lenders of any litigation or governmental proceedings pending or threatened (in writing) against Borrower or any of its Subsidiaries, which could reasonably be expected to result in damages or costs to Borrower or any of its Subsidiaries of One Hundred Thousand Dollars (\$100,000.00) or more or which could reasonably be expected to have a Material Adverse Change. Without limiting or contradicting any other more specific provision of this Agreement, promptly (and in any event within three (3) Business Days) upon Borrower becoming aware of the existence of any Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default, Borrower shall give written notice to Collateral Agent and the Lenders of such occurrence, which such notice shall include a reasonably detailed description of such Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default.

6.10 Intentionally Omitted.

6.11 Intentionally Omitted.

6.12 Landlord Waivers; Bailee Waivers. In the event that Borrower or any of its Subsidiaries, after the Effective Date, intends to add any new offices or business locations, including warehouses, or otherwise store any portion of the Collateral with, or deliver any portion of the Collateral to, a bailee, in each case pursuant to Section 7.2, then Borrower or such Subsidiary will first receive the written consent of Collateral Agent and, in the event that the Collateral at any new location is valued in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) in the aggregate, such bailee or landlord, as applicable, must execute and deliver a bailee waiver or landlord waiver, as applicable, in form and substance reasonably satisfactory to Collateral Agent prior to the addition of any new offices or business locations, or any such storage with or delivery to any such bailee, as the case may be.

6.13 Creation/Acquisition of Subsidiaries. In the event Borrower, or any of its Subsidiaries creates or acquires any Subsidiary, Borrower shall provide prior written notice to Collateral Agent and each Lender of the creation or acquisition of such new Subsidiary and take all such action as may be reasonably required by Collateral Agent or any Lender to cause each such Subsidiary to become a co-Borrower hereunder or to guarantee the Obligations of Borrower under the Loan Documents and, in each case, grant a continuing pledge and security interest in and to the assets of such Subsidiary (substantially as described on Exhibit A hereto); and Borrower (or its Subsidiary, as applicable) shall grant and pledge to Collateral Agent, for the ratable benefit of the Lenders, a perfected security interest in the stock, units or other evidence of ownership of each such newly created Subsidiary.

6.14 Further Assurances.

(a) Execute any further instruments and take further action as Collateral Agent or any Lender reasonably requests to perfect or continue Collateral Agent's Lien in the Collateral or to effect the purposes of this Agreement.

(b) Deliver to Collateral Agent and Lenders, within five (5) days after the same are sent or received, copies of all material correspondence, reports, documents and other filings with any Governmental Authority that could reasonably be expected to have a material adverse effect on any of the Governmental Approvals material to Borrower's business or otherwise could reasonably be expected to have a Material Adverse Change.

7. NEGATIVE COVENANTS

Borrower shall not, and shall not permit any of its Subsidiaries to, do any of the following without the prior written consent of the Required Lenders:

7.1 Dispositions. Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively, “**Transfer**”), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn out, surplus or obsolete Equipment; (c) in connection with Permitted Liens, Permitted Investments and Permitted Licenses; (d) use of cash and cash equivalents in the ordinary course of business and in connection with transactions not prohibited hereunder; and (e) other Transfers in an aggregate amount not in excess of Five Hundred Thousand Dollars (\$500,000.00) in any fiscal year.

7.2 Changes in Business, Management, Ownership, or Business Locations. (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses engaged in by Borrower as of the Effective Date or reasonably related thereto; (b) liquidate or dissolve; or (c) (i) any Key Person shall cease to be actively engaged in the management of Borrower unless written notice thereof is provided to Collateral Agent within five (5) days of such change, or (ii) suffer or permit a Change of Control. Borrower shall not, without at least thirty (30) days’ prior written notice to Collateral Agent: (A) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Two Hundred Fifty Thousand Dollars (\$250,000.00) in assets or property of Borrower or any of its Subsidiaries); (B) change its jurisdiction of organization, (C) change its organizational structure or type, (D) change its legal name, or (E) change any organizational number (if any) assigned by its jurisdiction of organization.

7.3 Mergers or Acquisitions. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock, shares or property of another Person. A Subsidiary may merge or consolidate into another Subsidiary (provided such surviving Subsidiary is a “co-Borrower” hereunder or has provided a secured Guaranty of Borrower’s Obligations hereunder) or with (or into) Borrower provided Borrower is the surviving legal entity, and as long as no Event of Default is occurring prior thereto or arises as a result thereof. Without limiting the foregoing, Borrower shall not, without Collateral Agent’s prior written consent, enter into any binding contractual arrangement with any Person to attempt to facilitate a merger or acquisition of Borrower, unless (i) no Event of Default exists when such agreement is entered into by Borrower, (ii) such agreement does not give such Person the right to claim any fees, payments or damages from Borrower in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00), and (iii) Borrower notifies Collateral Agent in advance of entering into such an agreement.

7.4 Indebtedness. Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

7.5 Encumbrance. Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein (except for Permitted Liens that are permitted by the terms of this Agreement to have priority over Collateral Agent’s or each Lender’s Lien), or enter into any agreement, document, instrument or other arrangement (except with or in favor of Collateral Agent, for the ratable benefit of the Lenders) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower, or any of its Subsidiaries, from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower’s or such Subsidiary’s Intellectual Property, except as is otherwise permitted in Section 7.1 hereof and the definition of “**Permitted Liens**” herein.

7.6 Maintenance of Collateral Accounts. Maintain any Collateral Account except pursuant to the terms of Section 6.6 hereof.

7.7 Distributions; Investments. (a) Pay any dividends (other than dividends payable solely in capital stock) or make any distribution or payment in respect of or redeem, retire or purchase any capital stock, provided that (i) Borrower may convert any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof, (ii) Borrower may pay dividends solely in common stock

and/or non-redeemable preferred stock; (iii) Borrower may repurchase the stock of former or current employees, directors, officers or consultants pursuant to stock repurchase agreements or stock repurchase plans, and provided further such repurchase does not exceed in the aggregate Two Hundred Fifty Thousand Dollars (\$250,000.00) and (iv) Borrower may make such distributions, payments, redemptions, retirements or purchases solely with the proceeds of any equity financings approved by the Board of Directors not in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) or (b) directly or indirectly make any Investment other than Permitted Investments, or permit any of its Subsidiaries to do so.

7.8 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower or any of its Subsidiaries, except for (a) transactions that are in the ordinary course of Borrower's or such Subsidiary's business, upon fair and reasonable terms that are no less favorable to Borrower or such Subsidiary than would be obtained in an arm's length transaction with a non-affiliated Person, and (b) Subordinated Debt or equity investments by Borrower's investors in Borrower or its Subsidiaries.

7.9 Subordinated Debt. (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof or adversely affect the subordination thereof to Obligations owed to the Lenders.

7.10 Compliance. Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a Material Adverse Change, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower or any of its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

7.11 Compliance with Anti-Terrorism Laws. Collateral Agent hereby notifies Borrower and each of its Subsidiaries that pursuant to the requirements of Anti-Terrorism Laws, and Collateral Agent's policies and practices, Collateral Agent is required to obtain, verify and record certain information and documentation that identifies Borrower and each of its Subsidiaries and their principals, which information includes the name and address of Borrower and each of its Subsidiaries and their principals and such other information that will allow Collateral Agent to identify such party in accordance with Anti-Terrorism Laws. Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries permit any Affiliate to, directly or indirectly, knowingly enter into any documents, instruments, agreements or contracts with any Person listed on the OFAC Lists. Borrower and each of its Subsidiaries shall immediately notify Collateral Agent if Borrower or such Subsidiary has knowledge that Borrower, or any Subsidiary or Affiliate of Borrower, is listed on the OFAC Lists or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries, permit any Affiliate to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 or any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

8. EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an “**Event of Default**”) under this Agreement:

8.1 Payment Default. Borrower fails to (a) make any payment of principal or interest on any Credit Extension on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day grace period shall not apply to payments due on the Maturity Date or the date of acceleration pursuant to Section 9.1 (a) hereof). During the cure period, the failure to cure the payment default is not an Event of Default (but no Credit Extension will be made during the cure period);

8.2 Covenant Default.

(a) Borrower or any of its Subsidiaries fails or neglects to perform any obligation in Sections 6.2 (Financial Statements, Reports, Certificates), 6.4 (Taxes), 6.5 (Insurance), 6.6 (Operating Accounts), 6.7 (Protection of Intellectual Property Rights), 6.9 (Notice of Litigation and Default), 6.10 (Financial Covenants), 6.11 (Performance Covenants), 6.13 (Creation/Acquisition of Subsidiaries) or Borrower violates any covenant in Section 7; or

(b) Borrower, or any of its Subsidiaries, fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Grace periods provided under this Section shall not apply, among other things, to financial covenants or any other covenants set forth in subsection (a) above;

8.3 Material Adverse Change. A Material Adverse Change occurs;

8.4 Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or any of its Subsidiaries or of any entity under control of Borrower or its Subsidiaries on deposit with any Lender or any Lender’s Affiliate or any bank or other institution at which Borrower or any of its Subsidiaries maintains a Collateral Account, or (ii) a notice of lien, levy, or assessment is filed against Borrower or any of its Subsidiaries or their respective assets by any government agency, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; and

(b) (i) any material portion of Borrower’s or any of its Subsidiaries’ assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower or any of its Subsidiaries from conducting any material part of its business;

8.5 Insolvency. (a) Borrower or any of its Subsidiaries is or becomes Insolvent; (b) Borrower or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any of its Subsidiaries and not dismissed or stayed within forty-five (45) days (but no Credit Extensions shall be made while Borrower or any Subsidiary is Insolvent and/or until any Insolvency Proceeding is dismissed);

8.6 Other Agreements. There is a default in any agreement to which Borrower or any of its Subsidiaries is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) or that could reasonably be expected to have a Material Adverse Change;

8.7 Judgments. One or more judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least Two Hundred Fifty Thousand Dollars (\$250,000.00) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be

rendered against Borrower or any of its Subsidiaries and shall remain unsatisfied, unvacated, or unstayed for a period of ten (10) days after the entry thereof (provided that no Credit Extensions will be made prior to the satisfaction, vacation, or stay of such judgment, order or decree);

8.8 Misrepresentations. Borrower or any of its Subsidiaries or any Person acting for Borrower or any of its Subsidiaries makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Collateral Agent and/or Lenders or to induce Collateral Agent and/or the Lenders to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made;

8.9 Subordinated Debt. A default or breach occurs under any agreement between Borrower or any of its Subsidiaries and any creditor of Borrower or any of its Subsidiaries that signed a subordination, intercreditor, or other similar agreement with Collateral Agent or the Lenders, or any creditor that has signed such an agreement with Collateral Agent or the Lenders breaches any terms of such agreement;

8.10 Guaranty. (a) Any Guaranty terminates or ceases for any reason to be in full force and effect; (b) any Guarantor does not perform any obligation or covenant under any Guaranty; (c) any circumstance described in Sections 8.3, 8.4, 8.5, 8.7, or 8.8 occurs with respect to any Guarantor, or (d) the liquidation, winding up, or termination of existence of any Guarantor;

8.11 Governmental Approvals. Any Governmental Approval shall have been revoked, rescinded, suspended, modified in an adverse manner, or not renewed in the ordinary course for a full term *and* such revocation, rescission, suspension, modification or non-renewal has resulted in or could reasonably be expected to result in a Material Adverse Change; or

8.12 Lien Priority. Any Lien created hereunder or by any other Loan Document shall at any time fail to constitute a valid and perfected Lien on any of the Collateral purported to be secured thereby, subject to no prior or equal Lien, other than Permitted Liens which are permitted to have priority in accordance with the terms of this Agreement, provided that such circumstance is not due to Collateral Agent's failure to file an appropriate continuation financing statement, amendment financing statement or initial financing statement.

8.13 Delisting. The shares of common stock of Borrower are delisted from NASDAQ Capital Market because of failure to comply with continued listing standards thereof or due to a voluntary delisting which results in such shares not being listed on any other nationally recognized stock exchange in the United States having listing standards at least as restrictive as the NASDAQ Capital Market.

9. RIGHTS AND REMEDIES

9.1 Rights and Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default, Collateral Agent may, and at the written direction of Required Lenders shall, without notice or demand, do any or all of the following: (i) deliver notice of the Event of Default to Borrower, (ii) by notice to Borrower declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations shall be immediately due and payable without any action by Collateral Agent or the Lenders) or (iii) by notice to Borrower suspend or terminate the obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders (but if an Event of Default described in Section 8.5 occurs all obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders shall be immediately terminated without any action by Collateral Agent or the Lenders).

(b) Without limiting the rights of Collateral Agent and the Lenders set forth in Section 9.1(a) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right, without notice or demand, to do any or all of the following:

(i) foreclose upon and/or sell or otherwise liquidate, the Collateral;

(ii) apply to the Obligations any (a) balances and deposits of Borrower that Collateral Agent or any Lender holds or controls, or (b) any amount held or controlled by Collateral Agent or any Lender owing to or for the credit or the account of Borrower; and/or

(iii) commence and prosecute an Insolvency Proceeding or consent to Borrower commencing any Insolvency Proceeding.

(c) Without limiting the rights of Collateral Agent and the Lenders set forth in Sections 9.1(a) and (b) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right, without notice or demand, to do any or all of the following:

(i) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Collateral Agent considers advisable, notify any Person owing Borrower money of Collateral Agent's security interest in such funds, and verify the amount of such account;

(ii) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Collateral Agent requests and make it available in a location as Collateral Agent reasonably designates. Collateral Agent may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Collateral Agent a license to enter and occupy any of its premises, without charge, to exercise any of Collateral Agent's rights or remedies;

(iii) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, and/or advertise for sale, the Collateral. Collateral Agent is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's and each of its Subsidiaries' labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Collateral Agent's exercise of its rights under this Section 9.1, Borrower's and each of its Subsidiaries' rights under all licenses and all franchise agreements inure to Collateral Agent, for the benefit of the Lenders;

(iv) place a "hold" on any account maintained with Collateral Agent or the Lenders and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(v) demand and receive possession of Borrower's Books;

(vi) appoint a receiver to seize, manage and realize any of the Collateral, and such receiver shall have any right and authority as any competent court will grant or authorize in accordance with any applicable law, including any power or authority to manage the business of Borrower or any of its Subsidiaries;

(vii) subject to clauses 9.1(a) and (b), exercise all rights and remedies available to Collateral Agent and each Lender under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof);

(viii) for any Letters of Credit, demand that Borrower (i) deposit cash with Bank in an amount equal to (x) if such Letters of Credit are denominated in Dollars, then one hundred five percent (105%); and (y) if such Letters of Credit are denominated in a Foreign Currency, then one hundred ten percent (110%), of the Dollar Equivalent of the aggregate face amount of all Letters of Credit remaining undrawn (plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment)), to secure all of the Obligations relating to such Letters of Credit, as collateral security for the repayment of any future drawings under such Letters of Credit, and Borrower shall forthwith deposit and pay such amounts, and (ii) pay in advance all letter of credit fees scheduled to be paid or payable over the remaining term of any Letters of Credit; and

(ix) terminate any FX Contracts.

Notwithstanding any provision of this Section 9.1 to the contrary, upon the occurrence of any Event of Default, Collateral Agent shall have the right to exercise any and all remedies referenced in this Section 9.1 without the written consent of Required Lenders following the occurrence of an Exigent Circumstance. As used in the immediately preceding sentence, "Exigent Circumstance" means any event or circumstance that, in the reasonable judgment of Collateral Agent, imminently threatens the ability of Collateral Agent to realize upon all or any material portion of the Collateral, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof, or failure of Borrower or any of its Subsidiaries after reasonable demand to maintain or reinstate adequate casualty insurance coverage, or which, in the judgment of Collateral Agent, could reasonably be expected to result in a material diminution in value of the Collateral.

9.2 Power of Attorney. Borrower hereby irrevocably appoints Collateral Agent as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's or any of its Subsidiaries' name on any checks or other forms of payment or security; (b) sign Borrower's or any of its Subsidiaries' name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Collateral Agent determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Collateral Agent or a third party as the Code or any applicable law permits. Borrower hereby appoints Collateral Agent as its lawful attorney-in-fact to sign Borrower's or any of its Subsidiaries' name on any documents necessary to perfect or continue the perfection of Collateral Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and Collateral Agent and the Lenders are under no further obligation to make Credit Extensions hereunder. Collateral Agent's foregoing appointment as Borrower's or any of its Subsidiaries' attorney in fact, and all of Collateral Agent's rights and powers, coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnity obligations) have been fully repaid and performed and Collateral Agent's and the Lenders' obligation to provide Credit Extensions terminates.

9.3 Protective Payments. If Borrower or any of its Subsidiaries fail to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Borrower or any of its Subsidiaries is obligated to pay under this Agreement or any other Loan Document, Collateral Agent may obtain such insurance or make such payment, and all amounts so paid by Collateral Agent are Lenders' Expenses and immediately due and payable, bearing interest at the Default Rate, and secured by the Collateral. Collateral Agent will make reasonable efforts to provide Borrower with notice of Collateral Agent obtaining such insurance or making such payment at the time it is obtained or paid or within a reasonable time thereafter. No such payments by Collateral Agent are deemed an agreement to make similar payments in the future or Collateral Agent's waiver of any Event of Default.

9.4 Application of Payments and Proceeds. Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Collateral Agent from or on behalf of Borrower or any of its Subsidiaries of all or any part of the Obligations, and, as between Borrower on the one hand and Collateral Agent and Lenders on the other, Collateral Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Collateral Agent may deem advisable notwithstanding any previous application by Collateral Agent, and (b) the proceeds of any sale of, or other realization upon all or any part of the Collateral shall be applied: first, to the Lenders' Expenses; second, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the United States Bankruptcy Code, would have accrued on such amounts); third, to the principal amount of the Obligations outstanding; and fourth, to any other indebtedness or obligations of Borrower owing to Collateral Agent or any Lender under the Loan Documents. Any balance remaining shall be delivered to Borrower

or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (x) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (y) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category. Any reference in this Agreement to an allocation between or sharing by the Lenders of any right, interest or obligation “ratably,” “proportionally” or in similar terms shall refer to Pro Rata Share unless expressly provided otherwise. Collateral Agent, or if applicable, each Lender, shall promptly remit to the other Lenders such sums as may be necessary to ensure the ratable repayment of each Lender’s portion of any Term Loan and the ratable distribution of interest, fees and reimbursements paid or made by Borrower. Notwithstanding the foregoing, a Lender receiving a scheduled payment shall not be responsible for determining whether the other Lenders also received their scheduled payment on such date; provided, however, if it is later determined that a Lender received more than its ratable share of scheduled payments made on any date or dates, then such Lender shall remit to Collateral Agent or other Lenders such sums as may be necessary to ensure the ratable payment of such scheduled payments, as instructed by Collateral Agent. If any payment or distribution of any kind or character, whether in cash, properties or securities, shall be received by a Lender in excess of its ratable share, then the portion of such payment or distribution in excess of such Lender’s ratable share shall be received by such Lender in trust for and shall be promptly paid over to the other Lender for application to the payments of amounts due on the other Lenders’ claims. To the extent any payment for the account of Borrower is required to be returned as a voidable transfer or otherwise, the Lenders shall contribute to one another as is necessary to ensure that such return of payment is on a pro rata basis. If any Lender shall obtain possession of any Collateral, it shall hold such Collateral for itself and as agent and bailee for Collateral Agent and other Lenders for purposes of perfecting Collateral Agent’s security interest therein.

9.5 Liability for Collateral. So long as Collateral Agent and the Lenders comply with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Collateral Agent and the Lenders, Collateral Agent and the Lenders shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

9.6 No Waiver; Remedies Cumulative. Failure by Collateral Agent or any Lender, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Collateral Agent or any Lender thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Collateral Agent and the Required Lenders and then is only effective for the specific instance and purpose for which it is given. The rights and remedies of Collateral Agent and the Lenders under this Agreement and the other Loan Documents are cumulative. Collateral Agent and the Lenders have all rights and remedies provided under the Code, any applicable law, by law, or in equity. The exercise by Collateral Agent or any Lender of one right or remedy is not an election, and Collateral Agent’s or any Lender’s waiver of any Event of Default is not a continuing waiver. Collateral Agent’s or any Lender’s delay in exercising any remedy is not a waiver, election, or acquiescence.

9.7 Demand Waiver. Borrower waives, to the fullest extent permitted by law, demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Collateral Agent or any Lender on which Borrower or any Subsidiary is liable.

10. NOTICES

All notices, consents, requests, approvals, demands, or other communication (collectively, “**Communication**”) by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Any of Collateral Agent, Lender or Borrower may change its mailing address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower:	CYMABAY THERAPEUTICS, INC. 7999 Gateway Blvd., Suite 130 Newark, CA 94560 Attn: Sujal Shah Fax: (510) 293-6853 Email: sshah@cymabay.com
with a copy (which shall not constitute notice) to:	Cooley LLP 101 California Street, 4th Floor San Francisco, CA 94111 Attn: Maricel Mojares-Moore Fax: (415) 693-2134 Email: mmoore@cooley.com
If to Collateral Agent:	OXFORD FINANCE LLC 133 North Fairfax Street Alexandria, Virginia 22314 Attention: Legal Department Fax: (703) 519-5225 Email: LegalDepartment@oxfordfinance.com
with a copy to	SILICON VALLEY BANK 2400 Hanover Street Palo Alto, California 94304 Attn: Jennifer Friel Goldstein Fax: (650) 320-0016 Email: JGoldstein@svb.com
with a copy (which shall not constitute notice) to:	DLA Piper LLP (US) 4365 Executive Drive, Suite 1100 San Diego, California 92121-2133 Attn: Troy Zander Fax: (858) 638-5086 Email: Troy.Zander@dlapiper.com

11. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER, AND JUDICIAL REFERENCE

California law governs the Loan Documents without regard to principles of conflicts of law. Borrower, Collateral Agent and each Lender each submit to the exclusive jurisdiction of the State and Federal courts in Santa Clara County, California; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Collateral Agent or any Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Collateral Agent or any Lender. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER, COLLATERAL AGENT AND EACH LENDER EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure § 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

12. GENERAL PROVISIONS

12.1 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not transfer, pledge or assign this Agreement or any rights or obligations under it without Collateral Agent's and each Lender's prior written consent (which may be granted or withheld in Collateral Agent's and each Lender's discretion, subject to Section 12.6). The Lenders have the right, without the consent of or notice to Borrower, to sell, transfer, assign, pledge, negotiate, or grant participation in (any such sale, transfer, assignment, negotiation, or grant of a participation, a "**Lender Transfer**") all or any part of, or any interest in, the Lenders' obligations, rights, and benefits under this Agreement and the other Loan Documents; *provided, however*, that any such Lender Transfer (other than a transfer, pledge, sale or assignment to an Eligible Assignee) of its obligations, rights, and benefits under this Agreement and the other Loan Documents shall require the prior written consent of the Required Lenders (such approved assignee, an "**Approved Lender**"). Borrower and Collateral Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned until Collateral Agent shall have received and accepted an effective assignment agreement in form satisfactory to Collateral Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee or Approved Lender as Collateral Agent reasonably shall require. Notwithstanding anything to the contrary contained herein, so long as no Event of Default has occurred and is continuing, no Lender Transfer (other than a Lender Transfer (i) in respect of the Warrants or (ii) in connection with (x) assignments by a Lender due to a forced divestiture at the request of any regulatory agency; or (y) upon the occurrence of a default, event of default or similar occurrence with respect to a

Lender's own financing or securitization transactions) shall be permitted, without Borrower's consent, to any Person which is an Affiliate or Subsidiary of Borrower, a direct competitor of Borrower or a vulture hedge fund, each as determined by Collateral Agent.

12.2 Indemnification. Borrower agrees to indemnify, defend and hold Collateral Agent and the Lenders and their respective directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Collateral Agent or the Lenders (each, an "**Indemnified Person**") harmless against: (a) all obligations, demands, claims, and liabilities (collectively, "**Claims**") asserted by any other party in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents; and (b) all losses or Lenders' Expenses incurred, or paid by Indemnified Person in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents between Collateral Agent, and/or the Lenders and Borrower (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct. Borrower hereby further indemnifies, defends and holds each Indemnified Person harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnified Person) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnified Person shall be designated a party thereto and including any such proceeding initiated by or on behalf of Borrower, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Collateral Agent or Lenders) asserting any right to payment for the transactions contemplated hereby which may be imposed on, incurred by or asserted against such Indemnified Person as a result of or in connection with the transactions contemplated hereby and the use or intended use of the proceeds of the loan proceeds except for liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements directly caused by such Indemnified Person's gross negligence or willful misconduct.

12.3 Time of Essence. Time is of the essence for the performance of all Obligations in this Agreement.

12.4 Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.5 Correction of Loan Documents. Collateral Agent and the Lenders may correct patent errors and fill in any blanks in this Agreement and the other Loan Documents consistent with the agreement of the parties.

12.6 Amendments in Writing; Integration. (a) No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, no approval or consent thereunder, or any consent to any departure by Borrower or any of its Subsidiaries therefrom, shall in any event be effective unless the same shall be in writing and signed by Borrower, Collateral Agent and the Required Lenders provided that:

(i) no such amendment, waiver or other modification that would have the effect of increasing or reducing a Lender's Term Loan Commitment or Commitment Percentage shall be effective as to such Lender without such Lender's written consent;

(ii) no such amendment, waiver or modification that would affect the rights and duties of Collateral Agent shall be effective without Collateral Agent's written consent or signature;

(iii) no such amendment, waiver or other modification shall, unless signed by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Term Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Term Loan (B) postpone the date fixed for, or waive, any payment of principal of any Term Loan or of interest on any Term Loan (other than default interest) or any fees provided for hereunder (other than late charges or for any termination of any commitment); (C) change the definition of the term "**Required Lenders**" or the percentage of Lenders which shall be required for the Lenders to take any action hereunder; (D) release all or substantially all of any material portion of the Collateral, authorize Borrower to sell or otherwise dispose of all or substantially all or any material portion of the Collateral or release any Guarantor of all or any portion of the

Obligations or its guaranty obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be expressly permitted under this Agreement or the other Loan Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 12.6 or the definitions of the terms used in this Section 12.6 insofar as the definitions affect the substance of this Section 12.6; (F) consent to the assignment, delegation or other transfer by Borrower of any of its rights and obligations under any Loan Document or release Borrower of its payment obligations under any Loan Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; (G) amend any of the provisions of Section 9.4 or amend any of the definitions of Pro Rata Share, Term Loan Commitment, Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder; (H) subordinate the Liens granted in favor of Collateral Agent securing the Obligations; or (I) amend any of the provisions of Section 12.10. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F), (G) and (H) of the preceding sentence;

(iv) the provisions of the foregoing clauses (i), (ii) and (iii) are subject to the provisions of any interlender or agency agreement among the Lenders and Collateral Agent pursuant to which any Lender may agree to give its consent in connection with any amendment, waiver or modification of the Loan Documents only in the event of the unanimous agreement of all Lenders.

(b) Other than as expressly provided for in Section 12.6(a)(i)-(iii), Collateral Agent may, if requested by the Required Lenders, from time to time designate covenants in this Agreement less restrictive by notification to a representative of Borrower.

(c) This Agreement and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

12.7 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

12.8 Survival. All covenants, representations and warranties made in this Agreement continue in full force and effect until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied. Without limiting the foregoing, except as otherwise provided in Section 4.1, the grant of security interest by Borrower in Section 4.1 shall survive until the termination of all Bank Services Agreements. The obligation of Borrower in Section 12.2 to indemnify each Lender and Collateral Agent, as well as the confidentiality provisions in Section 12.9 below, shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

12.9 Confidentiality. In handling any confidential information of Borrower, the Lenders and Collateral Agent shall exercise the same degree of care that it exercises for their own proprietary information, but disclosure of information may be made: (a) subject to the terms and conditions of this Agreement, to the Lenders' and Collateral Agent's Subsidiaries or Affiliates, or in connection with a Lender's own financing or securitization transactions and upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; (b) to prospective transferees (other than those identified in (a) above) or purchasers of any interest in the Credit Extensions (provided, however, the Lenders and Collateral Agent shall, except upon the occurrence and during the continuance of an Event of Default, obtain such prospective transferee's or purchaser's agreement to the terms of this provision or to similar confidentiality terms); (c) as required by law, regulation, subpoena, or other order; (d) to Lenders' or Collateral Agent's regulators or as otherwise required in connection with an examination or audit; (e) as Collateral Agent reasonably considers appropriate in exercising remedies under the Loan Documents; and (f) to third party service providers of the Lenders and/or Collateral Agent so long as such service providers have executed a confidentiality agreement with the Lenders and Collateral Agent with terms no less restrictive than those contained herein. Confidential information does not include information that either: (i) is in the public domain or in the Lenders' and/or Collateral Agent's possession when disclosed to the

Lenders and/or Collateral Agent, or becomes part of the public domain after disclosure to the Lenders and/or Collateral Agent; or (ii) is disclosed to the Lenders and/or Collateral Agent by a third party, if the Lenders and/or Collateral Agent does not know that the third party is prohibited from disclosing the information. Collateral Agent and the Lenders may use confidential information for any purpose, including, without limitation, for the development of client databases, reporting purposes, and market analysis. The provisions of the immediately preceding sentence shall survive the termination of this Agreement. The agreements provided under this Section 12.9 supersede all prior agreements, understanding, representations, warranties, and negotiations between the parties about the subject matter of this Section 12.9.

12.10 Right of Set Off. Borrower hereby grants to Collateral Agent and to each Lender, a lien, security interest and right of set off as security for all Obligations to Collateral Agent and each Lender hereunder, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Collateral Agent or the Lenders or any entity under the control of Collateral Agent or the Lenders (including a Collateral Agent affiliate) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Collateral Agent or the Lenders may set off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmaturing and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE COLLATERAL AGENT TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

12.11 Cooperation of Borrower. If necessary, Borrower agrees to (i) execute any documents (including new Secured Promissory Notes) reasonably required to effectuate and acknowledge each assignment of a Term Loan Commitment or Loan to an assignee in accordance with Section 12.1, (ii) make Borrower's management available to meet with Collateral Agent and prospective participants and assignees of Term Loan Commitments or Credit Extensions (which meetings shall be conducted no more often than twice every twelve months unless an Event of Default has occurred and is continuing), and (iii) assist Collateral Agent or the Lenders in the preparation of information relating to the financial affairs of Borrower as any prospective participant or assignee of a Term Loan Commitment or Term Loan reasonably may request. Subject to the provisions of Section 12.9, Borrower authorizes each Lender to disclose to any prospective participant or assignee of a Term Loan Commitment, any and all information in such Lender's possession concerning Borrower and its financial affairs which has been delivered to such Lender by or on behalf of Borrower pursuant to this Agreement, or which has been delivered to such Lender by or on behalf of Borrower in connection with such Lender's credit evaluation of Borrower prior to entering into this Agreement.

12.12 Silicon Valley Bank as Agent. Collateral Agent hereby appoints Silicon Valley Bank ("SVB") as its agent (and SVB hereby accepts such appointment) for the purpose of perfecting Collateral Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code can be perfected by possession or control, including without limitation, all deposit accounts maintained at SVB.

13. DEFINITIONS

13.1 Definitions. As used in this Agreement, the following terms have the following meanings:

"Account" is any "account" as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

"Account Debtor" is any "account debtor" as defined in the Code with such additions to such term as may hereafter be made.

"Affiliate" of any Person is a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

“**Agreement**” is defined in the preamble hereof.

“**Amortization Date**” is September 1, 2016.

“**Annual Projections**” is defined in Section 6.2(a).

“**Anti-Terrorism Laws**” are any laws relating to terrorism or money laundering, including Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by OFAC.

“**Approved Fund**” is any (i) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business or (ii) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (i) and that, with respect to each of the preceding clauses (i) and (ii), is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

“**Approved Lender**” is defined in Section 12.1.

“**Bank Services**” are any products, credit services, and/or financial accommodations previously, now, or hereafter provided to Borrower or any of its Subsidiaries by Bank or any Bank Affiliate, including, without limitation, any letters of credit, cash management services (including, without limitation, merchant services, direct deposit of payroll, business credit cards, and check cashing services), interest rate swap arrangements, and foreign exchange services as any such products or services may be identified in Bank’s various agreements related thereto (each, a “**Bank Services Agreement**”).

“**Bank**” is defined in the preamble hereof.

“**Basic Rate**” is, with respect to a Term Loan, the per annum rate of interest (based on a year of three hundred sixty (360) days) equal to the greater of (i) eight and seventy five hundredths percent (8.75%) and (ii) the sum of (a) the ninety (90) day U.S. LIBOR rate reported in the Wall Street Journal three (3) Business Days prior to the Funding Date of such Term Loan, plus (b) eight and forty seven hundredths percent (8.47%).

“**Blocked Person**” is any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224, or (e) a Person that is named a “specially designated national” or “blocked person” on the most current list published by OFAC or other similar list.

“**Borrower**” is defined in the preamble hereof.

“**Borrower’s Books**” are Borrower’s or any of its Subsidiaries’ books and records including ledgers, federal, and state tax returns, records regarding Borrower’s or its Subsidiaries’ assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“**Business Day**” is any day that is not a Saturday, Sunday or a day on which Collateral Agent is closed.

“**Cash Equivalents**” are (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc., and (c) certificates of deposit

maturing no more than one (1) year after issue provided that the account in which any such certificate of deposit is maintained is subject to a Control Agreement in favor of Collateral Agent. For the avoidance of doubt, the direct purchase by Borrower or any of its Subsidiaries of any Auction Rate Securities, or purchasing participations in, or entering into any type of swap or other derivative transaction, or otherwise holding or engaging in any ownership interest in any type of Auction Rate Security by Borrower or any of its Subsidiaries shall be conclusively determined by the Lenders as an ineligible Cash Equivalent, and any such transaction shall expressly violate each other provision of this Agreement governing Permitted Investments. Notwithstanding the foregoing, Cash Equivalents does not include and Borrower, and each of its Subsidiaries, are prohibited from purchasing, purchasing participations in, entering into any type of swap or other equivalent derivative transaction, or otherwise holding or engaging in any ownership interest in any type of debt instrument, including, without limitation, any corporate or municipal bonds with a long-term nominal maturity for which the interest rate is reset through a dutch auction and more commonly referred to as an auction rate security (each, an “**Auction Rate Security**”).

“**Change of Control**” means any event, transaction, or occurrence as a result of which any “person” (as such term is defined in Sections 3(a)(9) and 13(d)(3) of the Exchange Act), other than a trustee or other fiduciary holding securities under an employee benefit plan of Borrower, is or becomes a beneficial owner (within the meaning of Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of Borrower, representing forty nine percent (49.0%) or more of the combined voting power of Borrower’s then outstanding securities.

“**Claims**” are defined in Section 12.2.

“**Code**” is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of California; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Collateral Agent’s Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of California, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“**Collateral**” is any and all properties, rights and assets of Borrower described on Exhibit A.

“**Collateral Account**” is any Deposit Account, Securities Account, or Commodity Account, or any other bank account maintained by Borrower or any Subsidiary at any time.

“**Collateral Agent**” is, Oxford, not in its individual capacity, but solely in its capacity as agent on behalf of and for the benefit of the Lenders.

“**Commitment Percentage**” is set forth in Schedule 1.1, as amended from time to time.

“**Commodity Account**” is any “commodity account” as defined in the Code with such additions to such term as may hereafter be made.

“**Communication**” is defined in Section 10.

“**Compliance Certificate**” is that certain certificate in the form attached hereto as Exhibit C.

“**Contingent Obligation**” is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest

rates, currency exchange rates or commodity prices; but “Contingent Obligation” does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

“**Control Agreement**” is any control agreement entered into among the depository institution at which Borrower or any of its Subsidiaries maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower or any of its Subsidiaries maintains a Securities Account or a Commodity Account, Borrower and such Subsidiary, and Collateral Agent pursuant to which Collateral Agent obtains control (within the meaning of the Code) for the benefit of the Lenders over such Deposit Account, Securities Account, or Commodity Account.

“**Copyrights**” are any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

“**Credit Extension**” is any Term Loan or any other extension of credit by Collateral Agent or Lenders for Borrower’s benefit.

“**Default Rate**” is defined in Section 2.3(b).

“**Deposit Account**” is any “deposit account” as defined in the Code with such additions to such term as may hereafter be made.

“**Designated Deposit Account**” is Borrower’s deposit account, account number XXXXXX, maintained with Bank.

“**Disbursement Letter**” is that certain form attached hereto as Exhibit B-1.

“**Dollar Equivalent**” is, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a Foreign Currency, the equivalent amount therefor in Dollars as determined by Bank at such time on the basis of the then-prevailing rate of exchange in San Francisco, California, for sales of the Foreign Currency for transfer to the country issuing such Foreign Currency.

“**Dollars**,” “**dollars**” and “**\$**” each mean lawful money of the United States.

“**Effective Date**” is defined in the preamble of this Agreement.

“**Eligible Assignee**” is (i) a Lender, (ii) an Affiliate of a Lender, (iii) an Approved Fund and (iv) any commercial bank, savings and loan association or savings bank or any other entity which is an “accredited investor” (as defined in Regulation D under the Securities Act of 1933, as amended) and which extends credit or buys loans as one of its businesses, including insurance companies, mutual funds, lease financing companies and commercial finance companies, in each case, which either (A) has a rating of BBB or higher from Standard & Poor’s Rating Group and a rating of Baa2 or higher from Moody’s Investors Service, Inc. at the date that it becomes a Lender or (B) has total assets in excess of Five Billion Dollars (\$5,000,000,000.00), and in each case of clauses (i) through (iv), which, through its applicable lending office, is capable of lending to Borrower without the imposition of any withholding or similar taxes; provided that notwithstanding the foregoing, “Eligible Assignee” shall not include, unless an Event of Default has occurred and is continuing, (i) Borrower or any of Borrower’s Affiliates or Subsidiaries or (ii) a direct competitor of Borrower or a vulture hedge fund, each as determined by Collateral Agent. Notwithstanding the foregoing, (x) in connection with assignments by a Lender due to a forced divestiture at the request of any regulatory agency, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party and (y) in connection with a Lender’s own financing or securitization transactions, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party providing such financing or formed to undertake such securitization transaction and any transferee of such Person or party upon the

occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; provided that no such sale, transfer, pledge or assignment under this clause (y) shall release such Lender from any of its obligations hereunder or substitute any such Person or party for such Lender as a party hereto until Collateral Agent shall have received and accepted an effective assignment agreement from such Person or party in form satisfactory to Collateral Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee as Collateral Agent reasonably shall require.

“**Equipment**” is all “equipment” as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

“**ERISA**” is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

“**Event of Default**” is defined in Section 8.

“**Existing Indebtedness**” is the indebtedness of Borrower to Collateral Agent and Bank in the aggregate principal outstanding amount as of the Effective Date of Four Million Seventy Thousand Fifty Five and 56/100 Dollars (\$4,070,055.56), pursuant to that certain Loan and Security Agreement, dated September 30, 2013, entered into by and among Collateral Agent and Bank and Borrower, as amended.

“**Final Payment**” is a payment (in addition to and not a substitution for the regular monthly payments of principal plus accrued interest) due on the earliest to occur of (a) the Maturity Date, or (b) the acceleration of any Term Loan, or (c) the prepayment of a Term Loan pursuant to Section 2.2(c) or (d), equal to the original principal amount of such Term Loan multiplied by the Final Payment Percentage, payable to Lenders in accordance with their respective Pro Rata Shares.

“**Final Payment Percentage**” is six and one half percent (6.50%).

“**Foreign Currency**” means lawful money of a country other than the United States.

“**Foreign Subsidiary**” is a Subsidiary that is not an entity organized under the laws of the United States or any territory thereof.

“**Funding Date**” is any date on which a Credit Extension is made to or on account of Borrower which shall be a Business Day.

“**FX Contract**” is any foreign exchange contract by and between Borrower and Bank under which Borrower commits to purchase from or sell to Bank a specific amount of Foreign Currency on a specified date.

“**GAAP**” is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession in the United States, which are applicable to the circumstances as of the date of determination.

“**General Intangibles**” are all “general intangibles” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, any trade secret rights, including any rights to unpatented inventions, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income and other tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

“Governmental Approval” is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“Governmental Authority” is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

“Guarantor” is any Person providing a Guaranty in favor of Collateral Agent.

“Guaranty” is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

“Indebtedness” is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

“Indemnified Person” is defined in Section 12.2.

“Insolvency Proceeding” is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“Insolvent” means not Solvent.

“Intellectual Property” means all of Borrower’s or any Subsidiary’s right, title and interest in and to the following:

- (a) its Copyrights, Trademarks and Patents;
- (b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;
- (c) any and all source code;
- (d) any and all design rights which may be available to Borrower;
- (e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and
- (f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

“Inventory” is all “inventory” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of any Person’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

“**Investment**” is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance, payment or capital contribution to any Person.

“**Key Person**” is each of Borrower’s (i) Chief Executive Officer, who is Harold Van Wart as of the Effective Date, (ii) Chief Financial Officer, who is Sujal Shah as of the Effective Date and (iii) Chief Science Officer, who is Charles McWherter as of the Effective Date.

“**Lender**” is any one of the Lenders.

“**Lenders**” are the Persons identified on Schedule 1.1 hereto and each assignee that becomes a party to this Agreement pursuant to Section 12.1.

“**Lenders’ Expenses**” are all audit fees and expenses, costs, and expenses (including reasonable attorneys’ fees and expenses, as well as appraisal fees, fees incurred on account of lien searches, inspection fees, and filing fees) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred by Collateral Agent and/or the Lenders in connection with the Loan Documents.

“**Letter of Credit**” is a standby or commercial letter of credit issued by Bank upon request of Borrower based upon an application, guarantee, indemnity, or similar agreement.

“**Lien**” is a claim, mortgage, deed of trust, levy, charge, pledge, security interest, or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

“**Loan Documents**” are, collectively, this Agreement, the Warrants, the Perfection Certificates, each Compliance Certificate, each Disbursement Letter, each Loan Payment/Advance Request Form and any Bank Services Agreement, the Post Closing Letter, any subordination agreements, any note, or notes or guaranties executed by Borrower or any other Person, and any other present or future agreement entered into by Borrower, any Guarantor or any other Person for the benefit of the Lenders and Collateral Agent in connection with this Agreement; all as amended, restated, or otherwise modified.

“**Loan Payment/Advance Request Form**” is that certain form attached hereto as Exhibit B-2.

“**Material Adverse Change**” is (a) a material impairment in the perfection or priority of Collateral Agent’s Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations or condition (financial or otherwise) of Borrower or any Subsidiary; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

“**Maturity Date**” is August 1, 2019.

“**Obligations**” are all of Borrower’s obligations to pay when due any debts, principal, interest, Lenders’ Expenses, the Prepayment Fee, the Final Payment, and other amounts Borrower owes the Lenders now or later, in connection with, related to, following, or arising from, out of or under, this Agreement or, the other Loan Documents (other than the Warrants), or otherwise, including, without limitation, all obligations relating to letters of credit (including reimbursement obligations for drawn and undrawn letters of credit), cash management services, and foreign exchange contracts, if any, and including interest accruing after Insolvency Proceedings begin (whether or not allowed) and debts, liabilities, or obligations of Borrower assigned to the Lenders and/or Collateral Agent, and the performance of Borrower’s duties under the Loan Documents (other than the Warrants).

“**OFAC**” is the U.S. Department of Treasury Office of Foreign Assets Control.

“**OFAC Lists**” are, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

“Operating Documents” are, for any Person, such Person’s formation documents, as certified by the Secretary of State (or equivalent agency) of such Person’s jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“Patents” means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

“Payment Date” is the first (1st) calendar day of each calendar month, commencing on October 1, 2015.

“Perfection Certificate” and **“Perfection Certificates”** is defined in Section 5.1.

“Permitted Indebtedness” is:

- (a) Borrower’s Indebtedness to the Lenders and Collateral Agent under this Agreement and the other Loan Documents;
- (b) Indebtedness existing on the Effective Date and disclosed on the Perfection Certificate(s);
- (c) Subordinated Debt;
- (d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;

(e) Indebtedness consisting of capitalized lease obligations and purchase money Indebtedness, in each case incurred by Borrower or any of its Subsidiaries to finance the acquisition, repair, improvement or construction of fixed or capital assets of such person, provided that (i) the aggregate outstanding principal amount of all such Indebtedness does not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) at any time and (ii) the principal amount of such Indebtedness does not exceed the lower of the cost or fair market value of the property so acquired or built or of such repairs or improvements financed with such Indebtedness (each measured at the time of such acquisition, repair, improvement or construction is made);

(f) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of Borrower’s business;

(g) Indebtedness owed to Bank in respect of Bank Services; and

(h) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (e) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose materially more burdensome terms upon Borrower, or its Subsidiary, as the case may be.

“Permitted Investments” are:

(a) Investments disclosed on the Perfection Certificate(s) and existing on the Effective Date;

(b) (i) Investments consisting of cash and Cash Equivalents, and (ii) any other Investments permitted by Borrower’s investment policy, as amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved in writing by Collateral Agent;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;

(d) Investments consisting of Collateral Accounts in which Collateral Agent has a perfected security interest;

(e) Investments in connection with Transfers permitted by Section 7.1 and Investments permitted under Section 7.7;

(f) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's Board of Directors; not to exceed One Hundred Thousand Dollars (\$100,000.00) in the aggregate for (i) and (ii) in any fiscal year;

(g) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;

(h) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (h) shall not apply to Investments of Borrower in any Subsidiary; and

(i) non-cash Investments in joint ventures or strategic alliances in the ordinary course of Borrower's business consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support.

"Permitted Licenses" are (A) licenses of over-the-counter software that is commercially available to the public, and (B) non-exclusive and exclusive licenses for the use of the Intellectual Property of Borrower or any of its Subsidiaries entered into in the ordinary course of business, provided, that, with respect to each such license described in clause (B), (i) no Event of Default has occurred or is continuing at the time of such license; (ii) the license constitutes an arms-length transaction, the terms of which, on their face, do not provide for a sale or assignment of any Intellectual Property and do not restrict the ability of Borrower or any of its Subsidiaries, as applicable, to pledge, grant a security interest in or lien on, or assign or otherwise Transfer any Intellectual Property; (iii) in the case of any exclusive license, (x) Borrower delivers ten (10) days' prior written notice and a brief summary of the terms of the proposed license to Collateral Agent and the Lenders and delivers to Collateral Agent and the Lenders copies of the final executed licensing documents in connection with the exclusive license promptly upon consummation thereof, and (y) any such license could not result in a legal transfer of title of the licensed property but may be exclusive in respects other than territory and may be exclusive as to territory only as to discrete geographical areas outside of the United States; and (iv) all upfront payments, royalties, milestone payments or other proceeds arising from the licensing agreement that are payable to Borrower or any of its Subsidiaries are paid to a Deposit Account that is governed by a Control Agreement.

"Permitted Liens" are:

(a) Liens existing on the Effective Date and disclosed on the Perfection Certificates or arising under this Agreement and the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on its Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

(c) liens securing Indebtedness permitted under clause (e) of the definition of **"Permitted Indebtedness,"** provided that (i) such liens exist prior to the acquisition of, or attach substantially simultaneous with, or within twenty (20) days after the, acquisition, lease, repair, improvement or construction of, such property financed or leased by such Indebtedness and (ii) such liens do not extend to any property of Borrower other than the property (and proceeds thereof) acquired, leased or built, or the improvements or repairs, financed by such Indebtedness;

(d) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory, securing liabilities in the aggregate amount not to exceed One Hundred Thousand Dollars (\$100,000.00), and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(e) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(f) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(g) leases or subleases of real property granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), if the leases, subleases, licenses and sublicenses do not prohibit granting Collateral Agent or any Lender a security interest therein;

(h) banker's liens, rights of setoff and Liens in favor of financial institutions incurred in the ordinary course of business arising in connection with Borrower's deposit accounts or securities accounts held at such institutions solely to secure payment of fees and similar costs and expenses and provided such accounts are maintained in compliance with Section 6.6(b) hereof;

(i) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.4 or 8.7;

(j) Liens consisting of Permitted Licenses;

(k) deposits to secure the performance of bids, trade contracts, contracts for the purchase of property permitted hereunder, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case, incurred in the ordinary course of business and not representing an obligation for borrowed money; and

(l) deposits to secure the performance of leases incurred in the ordinary course of business and not representing an obligation for borrowed money so long as each such deposit is made at the commencement of a lease or its renewal when there is no underlying default under such lease.

“**Person**” is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

“**Post Closing Letter**” is that certain Post Closing Letter dated as of the Effective Date by and between Collateral Agent and Borrower.

“**Prepayment Fee**” is, with respect to any Term Loan subject to prepayment prior to the Maturity Date, whether by mandatory or voluntary prepayment, acceleration or otherwise, an additional fee payable to the Lenders in amount equal to three percent (3.00%) of the principal amount of such Term Loan prepaid.

“Prime Rate” is the rate of interest per annum from time to time published in the money rates section of The Wall Street Journal or any successor publication thereto as the “prime rate” then in effect; provided that if such rate of interest, as set forth from time to time in the money rates section of The Wall Street Journal, becomes unavailable for any reason as determined by Bank, the “Prime Rate” shall mean the rate of interest per annum announced by Bank as its prime rate in effect at its principal office in the State of California (such Bank announced Prime Rate not being intended to be the lowest rate of interest charged by Bank in connection with extensions of credit to debtors).

“Pro Rata Share” is, as of any date of determination, with respect to each Lender, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined by dividing the outstanding principal amount of Term Loans held by such Lender by the aggregate outstanding principal amount of all Term Loans.

“Registered Organization” is any “registered organization” as defined in the Code with such additions to such term as may hereafter be made.

“Required Lenders” means (i) for so long as all of the Persons that are Lenders on the Effective Date (each an **“Original Lender”**) have not assigned or transferred any of their interests in their Term Loan, Lenders holding one hundred percent (100%) of the aggregate outstanding principal balance of the Term Loan, or (ii) at any time from and after any Original Lender has assigned or transferred any interest in its Term Loan, Lenders holding at least sixty six percent (66%) of the aggregate outstanding principal balance of the Term Loan and, in respect of this clause (ii), (A) each Original Lender that has not assigned or transferred any portion of its Term Loan, (B) each assignee or transferee of an Original Lender’s interest in the Term Loan, but only to the extent that such assignee or transferee is an Affiliate or Approved Fund of such Original Lender, and (C) any Person providing financing to any Person described in clauses (A) and (B) above; provided, however, that this clause (C) shall only apply upon the occurrence of a default, event of default or similar occurrence with respect to such financing.

“Requirement of Law” is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Responsible Officer” is any of the President, Chief Executive Officer, or Chief Financial Officer of Borrower acting alone.

“Second Draw Milestone” means receipt by Collateral Agent and Lenders of evidence, in form and substance reasonably satisfactory to Collateral Agent and Lenders, (i) that Borrower has entered into an out bound license or co-development agreement with respect to Arhalofenate for gout (individually, the “Arhalofenate Agreement”, and collectively with any other out bound licenses or co-development agreements with respect to Arhalofenate for gout entered into by Borrower, the “Arhalofenate Agreements”) and (ii) of Borrower’s receipt of upfront payments of not less than Thirty Five Million Dollars (\$35,000,000.00) in the aggregate pursuant to all of the Arhalofenate Agreements.

“Second Draw Period” is the period commencing on the date of the occurrence of the Second Draw Milestone and ending on the earlier of (i) March 31, 2016 and (ii) the occurrence and continuance of an Event of Default; provided, however, that the Second Draw Period shall not commence if on the date of the occurrence of the Second Draw Milestone an Event of Default has occurred and is continuing.

“Secured Promissory Note” is defined in Section 2.4.

“Secured Promissory Note Record” is a record maintained by each Lender with respect to the outstanding Obligations owed by Borrower to Lender and credits made thereto.

“Securities Account” is any “securities account” as defined in the Code with such additions to such term as may hereafter be made.

“**Solvent**” is, with respect to any Person: the fair salable value of such Person’s consolidated assets (including goodwill minus disposition costs) exceeds the fair value of such Person’s liabilities; such Person is not left with unreasonably small capital after the transactions in this Agreement; and such Person is able to pay its debts (including trade debts) as they mature.

“**Subordinated Debt**” is indebtedness incurred by Borrower or any of its Subsidiaries subordinated to all Indebtedness of Borrower and/or its Subsidiaries to the Lenders (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Collateral Agent and the Lenders entered into between Collateral Agent, Borrower, and/or any of its Subsidiaries, and the other creditor), on terms acceptable to Collateral Agent and the Lenders.

“**Subsidiary**” is, with respect to any Person, any Person of which more than fifty percent (50%) of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person or through one or more intermediaries.

“**Term Loan**” is defined in Section 2.2(a)(ii) hereof.

“**Term A Loan**” is defined in Section 2.2(a)(i) hereof.

“**Term B Loan**” is defined in Section 2.2(a)(ii) hereof.

“**Term Loan Commitment**” is, for any Lender, the obligation of such Lender to make a Term Loan, up to the principal amount shown on Schedule 1.1. “**Term Loan Commitments**” means the aggregate amount of such commitments of all Lenders.

“**Trademarks**” means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

“**Transfer**” is defined in Section 7.1.

“**Warrants**” are those certain Warrants to Purchase Stock dated as of the Effective Date, or any date thereafter, issued by Borrower in favor of each Lender or such Lender’s Affiliates.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

BORROWER:

CYMABAY THERAPEUTICS, INC.

By /s/ Sujal Shah
Name: Sujal Shah
Title: CFO

COLLATERAL AGENT AND LENDER:

OXFORD FINANCE LLC

By /s/ Mark Davis
Name: Mark Davis
Title: Vice President-Finance, Secretary and Treasurer

LENDER:

SILICON VALLEY BANK

By /s/ Milo Bissin
Name: Milo Bissin
Title: Vice President

[Signature Page to Loan and Security Agreement]

SCHEDULE 1.1

Lenders and Commitments

Term A Loans

<u>Lender</u>	<u>Term Loan Commitment</u>	<u>Commitment Percentage</u>
OXFORD FINANCE LLC	\$ 6,666,666.67	66.67%
SILICON VALLEY BANK	\$ 3,333,333.33	33.33%
TOTAL	\$ 10,000,000.00	100.00%

Term B Loans

<u>Lender</u>	<u>Term Loan Commitment</u>	<u>Commitment Percentage</u>
OXFORD FINANCE LLC	\$ 3,333,333.33	66.67%
SILICON VALLEY BANK	\$ 1,666,666.67	33.33%
TOTAL	\$ 5,000,000.00	100.00%

Aggregate (all Term Loans)

<u>Lender</u>	<u>Term Loan Commitment</u>	<u>Commitment Percentage</u>
OXFORD FINANCE LLC	\$ 10,000,000.00	66.67%
SILICON VALLEY BANK	\$ 5,000,000.00	33.33%
TOTAL	\$ 15,000,000.00	100.00%

EXHIBIT A

Description of Collateral

The Collateral consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as noted below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts and other Collateral Accounts, all certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include (a) more than sixty five percent (65%) of the total combined voting power of all classes of stock entitled to vote the shares of capital stock (the "Shares") of any controlled foreign corporation (as defined in the U.S. Internal Revenue Code of 1986, as amended, the "U.S. Internal Revenue Code") which shares entitle the holder thereof to vote for directors or any other matter, if Borrower demonstrates to Collateral Agent's reasonable satisfaction that a pledge of more than sixty five percent (65%) of the Shares of such foreign corporation creates a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code, (b) any license or contract, in each case if the granting of a Lien in such license or contract is prohibited by or would constitute a default under the agreement governing such license or contract (but (A) only to the extent such prohibition is enforceable under applicable law and (B) other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-408 or 9-409 (or any other Section) of Division 9 of the Code); provided that upon the termination, lapsing or expiration of any such prohibition, such license or contract, as applicable, shall automatically be subject to the security interest granted in favor of Collateral Agent hereunder and become part of the "Collateral" or (c) any Intellectual Property; provided, however, the Collateral shall include all Accounts and all proceeds of Intellectual Property. If a judicial authority (including a U.S. Bankruptcy Court) would hold that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Effective Date, include the Intellectual Property to the extent necessary to permit perfection of Collateral Agent's security interest in such Accounts and such other property of Borrower that are proceeds of the Intellectual Property.

Pursuant to the terms of a certain negative pledge arrangement with Collateral Agent and the Lenders, Borrower has agreed not to encumber any of its Intellectual Property.

EXHIBIT B-1

Form of Disbursement Letter

[see attached]

DISBURSEMENT LETTER

August 7, 2015

The undersigned, being the duly elected and acting _____ of CYMABAY THERAPEUTICS, INC., a Delaware Corporation with offices located at 7999 Gateway Blvd., Suite 130, Newark, CA 94560 ("**Borrower**"), does hereby certify to **OXFORD FINANCE LLC** ("**Oxford**" and "**Lender**"), as collateral agent (the "**Collateral Agent**") in connection with that certain Loan and Security Agreement dated as of August 7, 2015, by and among Borrower, Collateral Agent and the Lenders from time to time party thereto (the "**Loan Agreement**"; with other capitalized terms used below having the meanings ascribed thereto in the Loan Agreement) that:

1. The representations and warranties made by Borrower in Section 5 of the Loan Agreement and in the other Loan Documents are true and correct in all material respects as of the date hereof.

2. No event or condition has occurred that would constitute an Event of Default under the Loan Agreement or any other Loan Document.

3. Borrower is in compliance with the covenants and requirements contained in Sections 4, 6 and 7 of the Loan Agreement.

4. All conditions referred to in Section 3 of the Loan Agreement to the making of the Loan to be made on or about the date hereof have been satisfied or waived by Collateral Agent.

5. No Material Adverse Change has occurred.

6. The undersigned is a Responsible Officer.

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7. The proceeds of the Term [A][B] Loan shall be disbursed as follows:

Disbursement from Oxford:	
Loan Amount	\$
Plus:	
— Deposit Received	\$
Less:	
— Facility Fee	(\$)
[Existing Debt Payoff to be remitted to Oxford per the Payoff Letter dated []]	
[— Interim Interest	(\$)]
— Lender's Legal Fees	(\$)*
Net Proceeds due from Oxford:	\$
Disbursement from SVB:	
Loan Amount	\$
Plus:	
— Deposit Received	\$
Less:	
— Facility Fee	(\$)
[Existing Debt Payoff to be remitted to Oxford per the Payoff Letter dated []]	
[— Interim Interest	(\$)]
Net Proceeds due from SVB:	\$
TOTAL TERM [A][B] LOAN NET PROCEEDS FROM LENDERS	\$

8. The Term [A][B] Loan shall amortize in accordance with the Amortization Table attached hereto.

9. The aggregate net proceeds of the Term Loans shall be transferred to the Designated Deposit Account as follows:

Account Name:	****
Bank Name:	Silicon Valley Bank
Bank Address:	3003 Tasman Drive Santa Clara, California 95054
Account Number:	****
ABA Number:	****

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* Legal fees and costs are through the Effective Date. Post-closing legal fees and costs, payable after the Effective Date, to be invoiced and paid post-closing.

Dated as of the date first set forth above.

BORROWER:

CYMABAY THERAPEUTICS, INC.

By _____

Name: _____

Title: _____

COLLATERAL AGENT AND LENDER:

OXFORD FINANCE LLC

By _____

Name: _____

Title: _____

LENDER:

SILICON VALLEY BANK

By _____

Name: _____

Title: _____

[Signature Page to Disbursement Letter]

AMORTIZATION TABLE
(Term [A][B] Loan)

[see attached]

EXHIBIT B-2

Loan Payment/Advance Request Form

DEADLINE FOR SAME DAY PROCESSING IS NOON PACIFIC TIME*

Fax To: _____

Date: _____

LOAN PAYMENT:

CYMABAY THERAPEUTICS, INC.

From Account # _____
(Deposit Account #)

To Account # _____
(Loan Account #)

Principal \$ _____

and/or Interest \$ _____

Authorized Signature: _____
Print Name/Title: _____

Phone Number: _____

LOAN ADVANCE:

Complete *Outgoing Wire Request* section below if all or a portion of the funds from this loan advance are for an outgoing wire.

From Account # _____
(Loan Account #)

To Account # _____
(Deposit Account #)

Amount of Advance \$ _____

All Borrower's representations and warranties in the Loan and Security Agreement are true, correct and complete in all material respects on the date of the request for an advance; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date:

Authorized Signature: _____
Print Name/Title: _____

Phone Number: _____

OUTGOING WIRE REQUEST:

Complete only if all or a portion of funds from the loan advance above is to be wired.

Deadline for same day processing is noon, Pacific Time

Beneficiary Name: _____
Beneficiary Bank: _____
City and State: _____

Amount of Wire: \$ _____
Account Number: _____

Beneficiary Bank Transit (ABA) #: _____

Beneficiary Bank Code (Swift, Sort, Chip, etc.): _____
(For International Wire Only)

Intermediary Bank: _____
For Further Credit to: _____

Transit (ABA) #: _____

Special Instruction: _____

By signing below, I (we) acknowledge and agree that my (our) funds transfer request shall be processed in accordance with and subject to the terms and conditions set forth in the agreements(s) covering funds transfer service(s), which agreements(s) were previously received and executed by me (us).

Authorized Signature: _____
Print Name/Title: _____
Telephone #: _____

2nd Signature (if required): _____
Print Name/Title: _____
Telephone #: _____

EXHIBIT C

Compliance Certificate

TO: OXFORD FINANCE LLC, as Collateral Agent and Lender SILICON VALLEY BANK , as Lender
FROM: CYMABAY THERAPEUTICS, INC.

The undersigned authorized officer (“**Officer**”) of CYMABAY THERAPEUTICS, INC. (“**Borrower**”), hereby certifies that in accordance with the terms and conditions of the Loan and Security Agreement by and among Borrower, Collateral Agent, and the Lenders from time to time party thereto (the “**Loan Agreement**,” capitalized terms used but not otherwise defined herein shall have the meanings given them in the Loan Agreement),

(a) Borrower is in complete compliance for the period ending _____ with all required covenants except as noted below;

(b) There are no Events of Default, except as noted below;

(c) Except as noted below, all representations and warranties of Borrower stated in the Loan Documents are true and correct in all material respects on this date and for the period described in (a), above; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date.

(d) Borrower, and each of Borrower’s Subsidiaries, has timely filed all required tax returns and reports or extensions thereof, Borrower, and each of Borrower’s Subsidiaries, has timely paid all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower, or Subsidiary, except as otherwise permitted pursuant to the terms of Section 5.8 of the Loan Agreement;

(e) No Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Collateral Agent and the Lenders.

Attached are the required documents, if any, supporting our certification(s). The Officer, on behalf of Borrower, further certifies that the attached financial statements are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes and except, in the case of unaudited financial statements, for the absence of footnotes and subject to year-end audit adjustments as to the interim financial statements.

Please indicate compliance status since the last Compliance Certificate by circling Yes, No, or N/A under “Complies” column.

	Reporting Covenant	Requirement	Actual	Complies		
1)	Financial statements	Monthly within 30 days	Yes	No	N/A	
2)	Annual (CPA Audited) statements	Within 95 days after FYE	Yes	No	N/A	
3)	Annual Financial Projections/Budget (prepared on a quarterly basis)	Annually (within 60 days of FYE), and when revised	Yes	No	N/A	

	Reporting Covenant	Requirement	Actual	Complies		
4)	A/R & A/P agings	If applicable		Yes	No	N/A
5)	8-K, 10-K and 10-Q Filings	Within 5 days of filing		Yes	No	N/A
6)	Compliance Certificate	Monthly within 30 days		Yes	No	N/A
7)	Total amount of Borrower's cash and cash equivalents at the last day of the measurement period		\$	Yes	No	N/A
8)	Total amount of Borrower's Subsidiaries' cash and cash equivalents at the last day of the measurement period		\$	Yes	No	N/A

Deposit and Securities Accounts

(Please list all accounts; attach separate sheet if additional space needed)

	Institution Name	Account Number	New Account?		Account Control Agreement in place?	
1)			Yes	No	Yes	No
2)			Yes	No	Yes	No
3)			Yes	No	Yes	No
4)			Yes	No	Yes	No

Performance Covenants

	Covenant	Requirement	Actual	Compliance	
3)	the Second Draw Milestone must have occurred	by no later than March 31, 2016		Yes	No

Other Matters

1)	Have there been any changes in management since the last Compliance Certificate?	Yes	No
2)	Have there been any transfers/sales/disposals/retirement of Collateral or IP prohibited by the Loan Agreement?	Yes	No
3)	Have there been any new or pending claims or causes of action against Borrower that involve more than One Hundred Thousand Dollars (\$100,000.00)?	Yes	No
4)	Have there been any material amendments of or other changes to the Operating Documents of Borrower or any of its Subsidiaries?	Yes	No

Exceptions

Please explain any exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions." Attach separate sheet if additional space needed.)

CYMABAY THERAPEUTICS, INC.

By _____

Name: _____

Title: _____

Date:

LENDER USE ONLY

Received by: _____ Date: _____

Verified by: _____ Date: _____

Compliance Status: Yes No

EXHIBIT D

Form of Secured Promissory Note

[see attached]

**SECURED PROMISSORY NOTE
(Term [A][B] Loan)**

\$ _____

Dated: August 7, 2015

FOR VALUE RECEIVED, the undersigned, CYMABAY THERAPEUTICS, INC., a Delaware Corporation with offices located at 7999 Gateway Blvd., Suite 130, Newark, CA 94560 ("**Borrower**") HEREBY PROMISES TO PAY to the order of [OXFORD FINANCE LLC][SILICON VALLEY BANK] ("**Lender**") the principal amount of [] MILLION DOLLARS (\$) or such lesser amount as shall equal the outstanding principal balance of the Term [A][B] Loan made to Borrower by Lender, plus interest on the aggregate unpaid principal amount of such Term [A][B] Loan, at the rates and in accordance with the terms of the Loan and Security Agreement dated August 7, 2015 by and among Borrower, Lender, Oxford Finance LLC, as Collateral Agent, and the other Lenders from time to time party thereto (as amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). If not sooner paid, the entire principal amount and all accrued and unpaid interest hereunder shall be due and payable on the Maturity Date as set forth in the Loan Agreement. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Principal, interest and all other amounts due with respect to the Term [A][B] Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Secured Promissory Note (this "**Note**"). The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

The Loan Agreement, among other things, (a) provides for the making of a secured Term [A][B] Loan by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid except as set forth in Section 2.2(c) and Section 2.2(d) of the Loan Agreement.

This Note and the obligation of Borrower to repay the unpaid principal amount of the Term [A][B] Loan, interest on the Term [A][B] Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all reasonable fees and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower's obligations hereunder not performed when due.

This Note shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of California.

The ownership of an interest in this Note shall be registered on a record of ownership maintained by Lender or its agent. Notwithstanding anything else in this Note to the contrary, the right to the principal of, and stated interest on, this Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Note on the part of any other person or entity.

[Balance of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

CYMABAY THERAPEUTICS, INC.

By _____

Name: _____

Title: _____

LOAN INTEREST RATE AND PAYMENTS OF PRINCIPAL

<u>Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Scheduled Payment Amount</u>	<u>Notation By</u>

CORPORATE BORROWING CERTIFICATE

BORROWER: CYMABAY THERAPEUTICS, INC.
LENDERS: OXFORD FINANCE LLC, as Collateral Agent and Lender
SILICON VALLEY BANK, as Lender

DATE: August 7, 2015

I hereby certify as follows, as of the date set forth above:

1. I am the Secretary, Assistant Secretary or other officer of Borrower. My title is as set forth below.
2. Borrower's exact legal name is set forth above. Borrower is a corporation existing under the laws of the State of Delaware.
3. Attached hereto as Exhibit A and Exhibit B, respectively, are true, correct and complete copies of (i) Borrower's Articles/Certificate of Incorporation (including amendments), as filed with the Secretary of State of the state in which Borrower is incorporated as set forth in paragraph 2 above; and (ii) Borrower's Bylaws. Neither such Articles/Certificate of Incorporation nor such Bylaws have been amended, annulled, rescinded, revoked or supplemented, and such Articles/Certificate of Incorporation and such Bylaws remain in full force and effect as of the date hereof.
4. The following resolutions were duly and validly adopted by Borrower's Board of Directors at a duly held meeting of such directors (or pursuant to a unanimous written consent or other authorized corporate action). Such resolutions are in full force and effect as of the date hereof and have not been in any way modified, repealed, rescinded, amended or revoked, and the Lenders may rely on them until each Lender receives written notice of revocation from Borrower.

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RESOLVED, that **any one** of the following officers or employees of Borrower, whose names, titles and signatures are below, may act on behalf of Borrower:

<u>Name</u>	<u>Title</u>	<u>Signature</u>	Authorized to Add or Remove Signatories
_____	_____	_____	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>

RESOLVED FURTHER, that **any one** of the persons designated above with a checked box beside his or her name may, from time to time, add or remove any individuals to and from the above list of persons authorized to act on behalf of Borrower.

RESOLVED FURTHER, that such individuals may, on behalf of Borrower:

Borrow Money. Borrow money from the Lenders.

Execute Loan Documents. Execute any loan documents any Lender requires.

Grant Security. Grant Collateral Agent a security interest in any of Borrower's assets.

Negotiate Items. Negotiate or discount all drafts, trade acceptances, promissory notes, or other indebtedness in which Borrower has an interest and receive cash or otherwise use the proceeds.

Issue Warrants. Issue warrants for Borrower's capital stock.

Further Acts. Designate other individuals to request advances, pay fees and costs and execute other documents or agreements (including documents or agreement that waive Borrower's right to a jury trial) they believe to be necessary to effectuate such resolutions.

RESOLVED FURTHER, that all acts authorized by the above resolutions and any prior acts relating thereto are ratified.

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5. The persons listed above are Borrower's officers or employees with their titles and signatures shown next to their names.

By: _____

Name: _____

Title: _____

*** *If the Secretary, Assistant Secretary or other certifying officer executing above is designated by the resolutions set forth in paragraph 4 as one of the authorized signing officers, this Certificate must also be signed by a second authorized officer or director of Borrower.*

I, the _____ of Borrower, hereby certify as to paragraphs 1 through 5 above, as of the date set forth above.
[print title]

By: _____

Name: _____

Title: _____

[Signature Page to Corporate Borrowing Certificate]

EXHIBIT A

Articles/Certificate of Incorporation (including amendments)

Filed with the SEC as Exhibit 3.1 to the Company's Amendment No. 2 to Registration Statement on Form 10, filed with the SEC on October 17, 2013, SEC File No. 000-55021

EXHIBIT B

Bylaws

Filed with the SEC as Exhibit 3.2 to our Amendment No. 2 to Registration Statement on Form 10, filed with the SEC on October 17, 2013, SEC File No. 000-55021

DEBTOR: CYMABAY THERAPEUTICS, INC.
SECURED PARTY: OXFORD FINANCE LLC,
as Collateral Agent

EXHIBIT A TO UCC FINANCING STATEMENT

Description of Collateral

The Collateral consists of all of Debtor's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as noted below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts and other Collateral Accounts, all certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include (a) more than sixty five percent (65%) of the total combined voting power of all classes of stock entitled to vote the shares of capital stock (the "Shares") of any controlled foreign corporation (as defined in the U.S. Internal Revenue Code of 1986, as amended, the "U.S. Internal Revenue Code") which shares entitle the holder thereof to vote for directors or any other matter, if Debtor demonstrates to Collateral Agent's reasonable satisfaction that a pledge of more than sixty five percent (65%) of the Shares of such foreign corporation creates a present and existing adverse tax consequence to Debtor under the U.S. Internal Revenue Code, (b) any license or contract, in each case if the granting of a Lien in such license or contract is prohibited by or would constitute a default under the agreement governing such license or contract (but (A) only to the extent such prohibition is enforceable under applicable law and (B) other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-408 or 9-409 (or any other Section) of Division 9 of the Code); provided that upon the termination, lapsing or expiration of any such prohibition, such license or contract, as applicable, shall automatically be subject to the security interest granted in favor of Collateral Agent hereunder and become part of the "Collateral" or (c) any Intellectual Property; provided, however, the Collateral shall include all Accounts and all proceeds of Intellectual Property. If a judicial authority (including a U.S. Bankruptcy Court) would hold that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Effective Date, include the Intellectual Property to the extent necessary to permit perfection of Collateral Agent's security interest in such Accounts and such other property of Debtor that are proceeds of the Intellectual Property.

Pursuant to the terms of a certain negative pledge arrangement with Collateral Agent and the Lenders, Debtor has agreed not to encumber any of its Intellectual Property.

CERTIFICATIONS

I, Harold Van Wart, certify that:

1. I have reviewed this Form 10-Q of CymaBay Therapeutics, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2015

/s/ Harold Van Wart

Harold Van Wart

Chief Executive Officer

CERTIFICATIONS

I, Sujal Shah, certify that:

1. I have reviewed this Form 10-Q of CymaBay Therapeutics, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2015

/s/ Sujal Shah

Sujal Shah

Chief Financial Officer

CERTIFICATION

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Harold Van Wart, Chief Executive Officer of CymaBay Therapeutics, Inc. (the “Company”), and Sujal Shah, Chief Financial Officer of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company’s Quarterly Report on Form 10-Q for the period ended September 30, 2015, to which this Certification is attached as Exhibit 32.1 (the “Periodic Report”), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act, and
2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

In Witness Whereof, the undersigned have set their hands hereto as of November 12, 2015.

/s/ Harold Van Wart

Harold Van Wart
Chief Executive Officer

/s/ Sujal Shah

Sujal Shah
Chief Financial Officer

This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of CymaBay Therapeutics, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.