

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington D.C. 20549  
FORM 10-Q**

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934**  
FOR THE QUARTERLY PERIOD ENDED September 30, 2024

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 033-80623

**Achieve Life Sciences, Inc.**  
(Exact Name of Registrant as Specified in Its Charter)

Delaware  
(State or Other Jurisdiction of  
Incorporation or Organization)

95-4343413  
(I.R.S. Employer  
Identification Number)

22722 29th Drive SE, Suite 100, Bothell, WA 98021

1040 West Georgia Street, Suite 1030, Vancouver, British Columbia, Canada V6E 4H1  
(Address of Principal Executive Offices)

(604) 210-2217  
(Registrant's telephone number, including area code)

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

<u>Title of each class</u>	<u>Trading Symbol</u>	<u>Name of exchange on which registered</u>
Common Stock, par value \$0.001 per share	ACHV	The Nasdaq Capital Market LLC

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

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

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

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

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

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

As of November 7, 2024 there were 34,389,946 shares of the registrant's Common Stock, \$0.001 par value per share, outstanding.

Achieve Life Sciences, Inc.

Index to Form 10-Q

	Page Number
<b><u>Part I. Financial Information</u></b>	5
Item 1. <a href="#"><u>Consolidated Financial Statements (unaudited)</u></a>	5
<a href="#"><u>Consolidated Balance Sheets as of September 30, 2024 (unaudited) and December 31, 2023</u></a>	5
<a href="#"><u>Consolidated Statements of Loss and Comprehensive Loss (unaudited) for the three and nine months ended September 30, 2024 and September 30, 2023</u></a>	6
<a href="#"><u>Consolidated Statements of Cash Flows (unaudited) for the nine months ended September 30, 2024 and September 30, 2023</u></a>	7
<a href="#"><u>Consolidated Statements of Stockholders' Equity (unaudited) for the nine months ended September 30, 2024 and September 30, 2023</u></a>	8
<a href="#"><u>Notes to Consolidated Financial Statements (unaudited)</u></a>	9
Item 2. <a href="#"><u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u></a>	24
Item 4. <a href="#"><u>Controls and Procedures</u></a>	35
<b><u>Part II. Other Information</u></b>	37
Item 1A. <a href="#"><u>Risk Factors</u></a>	37
Item 6. <a href="#"><u>Exhibits</u></a>	69
Items 2, 3, 4 and 5 are not applicable and therefore have been omitted.	
<a href="#"><u>Signatures</u></a>	71

## INFORMATION REGARDING FORWARD LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements involve a number of risks and uncertainties. We caution readers that any forward-looking statement is not a guarantee of future performance and that actual results could differ materially from those contained in the forward-looking statement. These statements are based on current expectations of future events. Such statements include, but are not limited to, statements about future financial and operating results, plans, objectives, expectations and intentions, costs and expenses, interest rates, outcome of contingencies, financial condition, results of operations, liquidity, business strategies, cost savings, objectives of management and other statements that are not historical facts. You can find many of these statements by looking for words like “believes,” “expects,” “anticipates,” “estimates,” “may,” “should,” “will,” “could,” “plan,” “intend” or similar expressions in this Quarterly Report on Form 10-Q or in documents incorporated by reference into this Quarterly Report on Form 10-Q. We intend that such forward-looking statements be subject to the safe harbors created thereby. Examples of these forward-looking statements include, but are not limited to:

- progress and preliminary and future results of any clinical trials;
- anticipated regulatory filings and U.S. Food and Drug Administration, or FDA, responses, recommendations, requirements or additional future clinical trials;
- our ability to raise additional capital as needed to fund our planned development and commercialization efforts and repay our existing debt;
- the potential benefits and differentiated profile, FDA approval, commercialization and commercial market for cytisinicline;
- the performance of, and our ability to obtain sufficient supply of cytisinicline in a timely manner from, third-party suppliers and manufacturers;
- timing and plans for the expansion of our focus to address other methods of nicotine addiction;
- timing and amount of future contractual payments, product revenue and operating expenses;
- market acceptance of our products and the estimated potential size of these markets; and
- our expectations regarding the impact of the macroeconomic and geopolitical environment, including inflation, increased volatility in interest rates and the debt and equity markets, instability in the global banking system, global health crises and pandemics and geopolitical conflict, and their potentially material adverse impact on our business and the execution of our preclinical studies and clinical trials.

These forward-looking statements are based on the current beliefs and expectations of our management and are subject to significant risks and uncertainties. If underlying assumptions prove inaccurate or unknown risks or uncertainties materialize, actual results may differ materially from current expectations and projections. Factors that might cause such a difference include those discussed in Item 1A “Risk Factors,” as well as those discussed elsewhere in the Quarterly Report on Form 10-Q. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this Quarterly Report on Form 10-Q or, in the case of documents referred to or incorporated by reference, the date of those documents.

All subsequent written or oral forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. We do not undertake any obligation to release publicly any revisions to these forward-looking statements to reflect events or circumstances after the date of this Quarterly Report on Form 10-Q or to reflect the occurrence of unanticipated events, except as may be required under applicable U.S. securities law. If we do update one or more forward-looking statements, no inference should be drawn that we will make additional updates with respect to those or other forward-looking statements.

### Summary of Risk Factors

An investment in our common stock involves various risks, and prospective investors are urged to carefully consider the matters discussed in the section titled “Risk Factors” prior to making an investment in our common stock. These risks include, but are not limited to, the following:

- Substantial doubt exists as to our ability to continue as a going concern. Our ability to continue as a going concern is subject to material uncertainty and dependent on our success at raising additional capital sufficient to meet our obligations on a timely basis. If we fail to obtain additional financing when needed, we may be unable to complete the development, regulatory approval and commercialization of our product candidate.

- We have incurred substantial debt, which could impair our flexibility and access to capital and adversely affect our financial position, and our business would be materially adversely affected if we are unable to service our debt obligations.
- Cytisinicline is currently our sole product candidate and there is no guarantee that we will be able to successfully develop and commercialize cytisnicline.
- We are dependent upon a single company for the manufacture and supply of cytisnicline.
- The development of our product candidate is dependent upon securing sufficient quantities of cytisnicline from trees and other plants, which grow outside of the United States in a limited number of locations.
- We currently exclusively rely on Sopharma to manufacture cytisnicline for use in clinical trials and plan to engage other third parties for our manufacturing process, including to manufacture future supply of cytisnicline on a commercial scale, if approved. Our commercialization of cytisnicline could be stopped, delayed or made less profitable if Sopharma fails to obtain approval of government regulators, fails to provide us with sufficient quantities of product or fails to do so at acceptable quality levels or prices.
- We plan to submit a New Drug Application, or NDA, to the FDA for approval of cytisnicline as an aid in treating nicotine dependence for smoking cessation, based largely on data from our completed Phase 3 ORCA-2 and ORCA-3 clinical trials and the ongoing ORCA-OL trial; however, there can be no assurance that the data from our clinical trials will ultimately support an NDA filing or that the FDA will grant marketing approval of cytisnicline without additional clinical or nonclinical studies, or at all.
- If we do not obtain the necessary regulatory approvals in the United States and/or other countries, we will not be able to sell cytisnicline.
- Cytisinicline may cause undesirable side effects or have other properties that could delay or prevent regulatory approval, limit the commercial viability of an approved label, or result in significant negative consequences following marketing approval, if any.
- It is difficult to evaluate our current business, predict our future prospects and forecast our financial performance and growth.
- We face substantial competition, and our competitors may discover, develop or commercialize products faster or more successfully than us.
- We may not be successful in obtaining or maintaining necessary rights to cytisnicline, product compounds and processes for our development pipeline through acquisitions and in-licenses.

**PART I. FINANCIAL INFORMATION**  
**Item 1. Consolidated Financial Statements**

**Achieve Life Sciences, Inc.**  
**Consolidated Balance Sheets**  
**(Unaudited)**

(In thousands, except per share and share amounts)

	September 30, 2024	December 31, 2023
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents <i>[note 6]</i>	\$ 9,544	\$ 15,546
Short-term investments <i>[note 6]</i>	33,367	—
Grant receivable <i>[note 3]</i>	—	111
Prepaid expenses and other assets	2,618	1,325
Total current assets	<u>45,529</u>	<u>16,982</u>
Other assets and restricted cash <i>[note 6]</i>	304	92
Right-of-use assets <i>[note 9]</i>	20	66
License agreement <i>[note 4 and note 5]</i>	1,030	1,197
Goodwill	1,034	1,034
Total assets	<u>\$ 47,917</u>	<u>\$ 19,371</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 1,011	\$ 618
Accrued liabilities other	898	351
Contingent consideration <i>[note 5 and note 6]</i>	699	528
Accrued clinical liabilities	1,745	280
Accrued compensation	2,341	2,311
Current portion of long-term obligations <i>[note 9]</i>	22	63
Current portion of convertible debt <i>[note 6 and note 7]</i>	—	16,662
Total current liabilities	<u>6,716</u>	<u>20,813</u>
Non-current portion of convertible debt <i>[note 6 and note 7]</i>	9,823	—
Long-term obligations <i>[note 9]</i>	—	6
Total liabilities	<u>16,539</u>	<u>20,819</u>
Commitments and contingencies <i>[note 9]</i>		
Stockholders' equity:		
Series A convertible preferred stock, \$0.001 par value, 9,158 shares designated, zero issued and outstanding at September 30, 2024 and zero issued and outstanding at December 31, 2023	—	—
Series B convertible preferred stock, \$0.001 par value, 6,256 shares designated, zero issued and outstanding at September 30, 2024 and zero issued and outstanding at December 31, 2023	—	—
Common stock, \$0.001 par value, 150,000,000 shares authorized, 34,389,946 issued and outstanding at September 30, 2024 and 21,165,760 issued and outstanding at December 31, 2023	103	90
Additional paid-in capital	224,418	164,209
Accumulated deficit	(193,218)	(165,751)
Accumulated other comprehensive income	75	4
Total stockholders' equity	<u>31,378</u>	<u>(1,448)</u>
Total liabilities and stockholders' equity	<u>\$ 47,917</u>	<u>\$ 19,371</u>
Going concern <i>[note 1]</i>		

See accompanying notes.

**Achieve Life Sciences, Inc.**  
**Consolidated Statements of Loss and Comprehensive Loss**  
**(Unaudited)**

(In thousands, except per share and share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
<b>EXPENSES</b>				
Research and development	7,609	3,581	15,521	13,700
General and administrative	4,857	2,991	11,358	9,164
Total operating expenses	<u>12,466</u>	<u>6,572</u>	<u>26,879</u>	<u>22,864</u>
<b>OTHER INCOME (EXPENSE)</b>				
Interest income	673	262	1,874	617
Interest expense <i>[note 7]</i>	(366)	(781)	(1,983)	(2,066)
Change in fair value of contingent consideration <i>[note 5 and note 6]</i>	(62)	—	(171)	—
Loss on extinguishment of 2023 SVB convertible term loan <i>[note 7]</i>	(283)	—	(283)	—
Other expense	(8)	(17)	(25)	(26)
Total other expense	<u>(46)</u>	<u>(536)</u>	<u>(588)</u>	<u>(1,475)</u>
<b>Net loss</b>	<u>\$ (12,512)</u>	<u>\$ (7,108)</u>	<u>(27,467)</u>	<u>(24,339)</u>
<b>OTHER COMPREHENSIVE LOSS</b>				
Net unrealized loss on securities	82	—	71	—
Total other comprehensive loss	<u>82</u>	<u>—</u>	<u>71</u>	<u>—</u>
<b>Comprehensive loss</b>	<u>\$ (12,430)</u>	<u>\$ (7,108)</u>	<u>(27,396)</u>	<u>(24,339)</u>
Basic and diluted net loss per common share <i>[note 8[d]]</i>	<u>\$ (0.36)</u>	<u>\$ (0.34)</u>	<u>\$ (0.88)</u>	<u>\$ (1.26)</u>
Weighted average shares used in computation of basic and diluted net loss per common share <i>[note 8[d]]</i>	<u>34,355,050</u>	<u>21,127,281</u>	<u>31,251,997</u>	<u>19,376,316</u>

See accompanying notes.

**Achieve Life Sciences, Inc.**  
**Consolidated Statements of Cash Flows**  
**(Unaudited)**  
(In thousands)

	Nine Months Ended September 30,	
	2024	2023
<b>Operating Activities:</b>		
Net loss	\$ (27,467)	\$ (24,339)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization <i>[note 4]</i>	171	171
Stock-based compensation <i>[note 8[c], note 8[e], note 8[f] and note 8[g]]</i>	4,082	3,449
Shares issued as settlement with trade vendor	—	273
Accrued interest on 2023 SVB convertible term loan <i>[note 7]</i>	799	910
Amortization of 2024 SVB convertible term loan transaction costs <i>[note 7]</i>	9	—
Accretion of discount on modification of debt	365	268
Loss on extinguishment of 2023 SVB convertible term loan	283	—
Change in fair value of contingent consideration <i>[note 5 and note 6]</i>	171	—
Changes in operating assets and liabilities:		
Grant receivable <i>[note 3]</i>	111	22
Prepaid expenses and other assets	(1,539)	618
Accounts payable	393	(1,022)
Accrued liabilities other	547	310
Accrued clinical liabilities	1,465	(739)
Accrued compensation	30	22
Lease obligation <i>[note 9]</i>	(1)	(58)
Net cash used in operating activities	(20,581)	(20,115)
<b>Financing Activities:</b>		
Proceeds from exercise of warrants	—	227
Financing costs relating to November 2022 private placement	—	(30)
Taxes paid related to net share settlement of equity awards	(114)	(220)
Proceeds from May 2023 registered direct offering, net of issuance costs	—	15,301
Proceeds from February 2024 registered direct offering, net of issuance costs	56,076	—
Proceeds from employee share purchase plan	178	—
Repayment of 2023 SVB convertible term loan <i>[note 7]</i>	(18,109)	—
Receipt of 2024 SVB convertible term loan less transaction costs <i>[note 7]</i>	9,814	—
Net cash provided by financing activities	47,845	15,278
<b>Investing Activities:</b>		
Purchase of property and equipment	—	(15)
Purchase of investments	(46,957)	—
Maturities of investments	13,660	—
Net cash used in investing activities	(33,297)	(15)
Effect of exchange rate changes on cash	1	—
Net increase/(decrease) in cash, cash equivalents and restricted cash	(6,032)	(4,852)
Cash, cash equivalents and restricted cash at beginning of the period	15,596	24,821
Cash, cash equivalents and restricted cash at end of the period	\$ 9,564	\$ 19,969

See accompanying notes.

Achieve Life Sciences, Inc.

Consolidated Statements of Stockholders' Equity  
(Unaudited)

(In thousands, except share amounts)

	Common Stock		Preferred Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total, Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balance, December 31, 2023	21,165,760	\$ 90	—	\$ —	\$ 164,209	\$ 4	\$ (165,751)	\$ (1,448)
Stock-based compensation expense	—	—	—	—	1,288	—	—	1,288
Shares issued - February 2024 registered direct offering	13,086,151	13	—	—	56,097	—	—	56,110
Net loss	—	—	—	—	—	—	(6,494)	(6,494)
Balance, March 31, 2024	34,251,911	\$ 103	—	\$ —	\$ 221,594	\$ 4	\$ (172,245)	\$ 49,456
Stock-based compensation expense	—	—	—	—	1,454	—	—	1,454
Financing costs relating to February 2024 registered direct offering	—	—	—	—	(39)	—	—	(39)
Restricted stock unit settlements	113,125	—	—	—	—	—	—	—
Restricted stock unit settlements withheld and retired to treasury	(23,733)	—	—	—	(114)	—	—	(114)
Other comprehensive income	—	—	—	—	—	(11)	—	(11)
Net loss	—	—	—	—	—	—	(8,461)	(8,461)
Balance, June 30, 2024	34,341,303	\$ 103	—	\$ —	\$ 222,895	\$ (7)	\$ (180,706)	\$ 42,285
Stock-based compensation expense	—	—	—	—	1,340	—	—	1,340
Financing costs relating to February 2024 registered direct offering	—	—	—	—	5	—	—	5
Shares issued under employee share purchase plan	48,643	—	—	—	178	—	—	178
Other comprehensive income	—	—	—	—	—	82	—	82
Net loss	—	—	—	—	—	—	(12,512)	(12,512)
Balance, September 30, 2024	34,389,946	\$ 103	—	\$ —	\$ 224,418	\$ 75	\$ (193,218)	\$ 31,378

	Common Stock		Preferred Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total, Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balance, December 31, 2022	17,897,029	\$ 87	—	\$ —	\$ 144,148	\$ 4	\$ (135,936)	\$ 8,303
Stock-based compensation expense	—	—	—	—	1,085	—	—	1,085
Shares issued on exercise of warrants	33,333	—	—	—	77	—	—	77
Financing costs relating to November 2022 private placement	—	—	—	—	(30)	—	—	(30)
Net loss	—	—	—	—	—	—	(8,992)	(8,992)
Balance, March 31, 2023	17,930,362	\$ 87	—	\$ —	\$ 145,280	\$ 4	\$ (144,928)	\$ 443
Stock-based compensation expense	—	—	—	—	1,190	—	—	1,190
Shares issued on exercise of warrants	65,000	—	—	—	150	—	—	150
Shares issued - May 2023 registered direct offering	3,000,000	3	—	—	15,298	—	—	15,301
SVB convertible debt refinancing discount	—	—	—	—	1,074	—	—	1,074
Restricted stock unit settlements	139,750	—	—	—	—	—	—	—
Restricted stock unit settlements withheld and retired to treasury	(29,352)	—	—	—	(220)	—	—	(220)
Net loss	—	—	—	—	—	—	(8,239)	(8,239)
Balance, June 30, 2023	21,105,760	\$ 90	—	\$ —	\$ 162,772	\$ 4	\$ (153,167)	\$ 9,699
Stock-based compensation expense	—	—	—	—	1,174	—	—	1,174
Shares issued as settlement with trade vendor	60,000	—	—	—	273	—	—	273
Net loss	—	—	—	—	—	—	(7,108)	(7,108)
Balance, September 30, 2023	21,165,760	\$ 90	—	\$ —	\$ 164,219	\$ 4	\$ (160,275)	\$ 4,038

See accompanying notes.



**Achieve Life Sciences, Inc.**  
**Notes to Consolidated Financial Statements**  
**(Unaudited)**

**1. NATURE OF BUSINESS, BASIS OF PRESENTATION AND GOING CONCERN UNCERTAINTY**

Achieve Life Sciences, Inc. (referred to as “Achieve,” “we,” “us,” or “our”) is a late-stage pharmaceutical company dedicated to the global development and commercialization of cytidinacilicline for the treatment of nicotine dependence. We were incorporated in the state of Delaware, and operate out of Seattle, Washington and Vancouver, British Columbia.

The unaudited consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States, or U.S. GAAP, for interim financial information and with the instructions to Form 10-Q. Accordingly, they do not include all of the information and footnotes required to be presented for complete financial statements. The accompanying unaudited consolidated financial statements reflect all adjustments (consisting only of normal recurring items) which are, in the opinion of management, necessary for a fair presentation of the results for the interim periods presented. The accompanying consolidated Balance Sheet at December 31, 2023 has been derived from the audited consolidated financial statements included in our Annual Report on Form 10-K for the year then ended. The unaudited consolidated financial statements and related disclosures have been prepared with the assumption that users of the interim financial information have read or have access to the audited consolidated financial statements for the preceding fiscal year. Accordingly, these financial statements should be read in conjunction with the audited consolidated financial statements and the related notes thereto included in the Annual Report on Form 10-K for the year ended December 31, 2023 and filed with the U.S. Securities and Exchange Commission, or the SEC, on March 28, 2024.

The consolidated financial statements include the accounts of Achieve and our wholly owned subsidiaries, Achieve Life Sciences Technologies Inc., Achieve Life Science, Inc., Extab Corporation, and Achieve Pharma UK Limited. All intercompany balances and transactions have been eliminated.

**Going Concern Uncertainty**

The accompanying financial statements have been prepared assuming we will continue to operate as a going concern, which contemplates the realization of assets and liabilities and commitments in the normal course of business.

We have historically experienced recurring losses from operations and have incurred an accumulated deficit of \$193.2 million through September 30, 2024. As of September 30, 2024, we had cash, cash equivalents and short-term investments of \$42.9 million and a positive working capital balance of \$38.8 million. For the nine months ended September 30, 2024, we incurred a net loss of \$27.5 million and net cash used in operating activities was \$20.6 million.

Substantial doubt exists as to our ability to continue as a going concern. Our ability to continue as a going concern is subject to material uncertainty and dependent on our ability to obtain additional financing. We have historically financed our operations through equity offerings and/or debt financings. There can be no assurance that financing from these or other sources will be available to us in the future. Without additional funds, we may be forced to delay, scale back or eliminate some of our research and development, or R&D, activities or other operations and potentially delay product development in an effort to provide sufficient funds to continue our operations. If any of these events occurs, our ability to achieve our development and commercialization goals would be adversely affected.

Our current resources are insufficient to fund our planned operations for the next 12 months. We will continue to require substantial additional capital to continue our clinical development activities. Accordingly, we will need to raise substantial additional capital from the sale of our securities, debt, partnering arrangements, non-dilutive fundraising or other financing transactions in order to continue to fund our operations and finance the remaining development and commercialization of our product candidate. The amount and timing of our future funding requirements will depend on many factors, including the pace and results of our clinical development efforts. The uncertainty with respect to our operations and the market generally may also make it challenging to raise additional capital on favorable terms, if at all. Failure to raise capital as and when needed, on favorable terms or at all, will have a negative impact on our financial condition and our ability to develop our product candidate. We expect our expenses to substantially increase over time in connection with our ongoing activities, particularly as we advance our product candidate in clinical development and support future commercialization.

We are required to keep substantially all of our cash and cash equivalents with a single financial institution, Silicon Valley Bank, a division of First-Citizens Bank & Trust Company, or FCB, which we refer to as SVB, as required by the covenants of our New Debt Agreement (Note 6 – Fair Value Measurements - Concentration of Cash and Cash Equivalents Risk and Note 7 – Convertible Debt).

Our commercial bank balances exceed federal insurance limits. We have not experienced any losses in our cash and cash equivalents for the nine months ended September 30, 2024 and 2023.

These consolidated financial statements do not include any adjustments to the amounts and classification of assets and liabilities that might be necessary should we be unable to continue as a going concern. Such adjustments could be material.

## 2. ACCOUNTING POLICIES

The preparation of financial statements in accordance with U.S. GAAP requires management to make estimates and assumptions that affect reported amounts and related disclosures. We have discussed those estimates that we believe are critical and require the use of complex judgment in their application in our audited financial statements for the year ended December 31, 2023 in our Annual Report on Form 10-K filed with the SEC, on March 28, 2024. Since December 31, 2023, there have been no material changes to our critical accounting policies or the methodologies or assumptions we apply under them other than the ones noted below under "Significant Accounting Policies."

### Significant Accounting Policies

#### *Short-Term Investments*

Short-term investments consist of financial instruments purchased with an original maturity of greater than three months and less than one year. We consider our short-term investments as available-for-sale and carry them at fair value, with unrealized gains and losses, if any, reported as accumulated other comprehensive income or loss, which is a separate component of stockholders' equity. Realized gains and losses on the sale or impairment, if any, of these securities, are recognized in net income or loss. The cost of investments sold is based on the specific identification method.

#### *Fair value of financial instruments*

The fair value of our marketable securities is based on quoted market prices and trade data for comparable securities.

## 3. GOVERNMENT GRANT

In July 2021, we announced that we were awarded a grant from the National Institute on Drug Abuse, or NIDA, of the National Institutes of Health, or NIH, to evaluate the use of cytisinicline as a treatment for cessation of nicotine e-cigarette use. This initial grant award, in the amount of \$0.3 million, commenced on August 1, 2021, and was utilized to complete critical regulatory and clinical operational activities, such as protocol finalization, clinical trial site identification, drug packaging, and submission of a new Investigational New Drug Application, or IND, to the U.S. Food and Drug Administration, or FDA, for investigating cytisinicline in nicotine e-cigarette users.

In November 2021, we announced that the FDA had completed their review and accepted the Investigational New Drug Application to investigate cytisinicline as a cessation treatment in this population. In June 2022, following NIH review of completed milestones, we announced that we were awarded the next grant funding from the NIDA in the amount of approximately \$2.5 million, which we have used to conduct the ORCA-V1 Phase 2 clinical trial.

In June 2022, we announced the initiation of the ORCA-V1 Phase 2 clinical trial. ORCA-V1 will evaluate the efficacy and safety of 3 mg cytisinicline dosed three times daily compared to placebo in approximately 160 adult e-cigarette users at five clinical trial locations in the United States. Participants were randomized to receive cytisinicline or placebo for 12 weeks in combination with standard cessation behavioral support.

The NIDA/NIH grant for ORCA-V1 was fully utilized as of the first quarter of 2024 and we have received the full amount of approximately \$2.5 million in reimbursements from NIDA/NIH. We do not expect to receive any further reimbursements from this grant. For the nine months ended September 30, 2024, we incurred \$16,000 in qualifying R&D expenditures, all of which were incurred in the first quarter of 2024, under the NIDA/NIH grant, which has been recorded as a reduction in R&D expense.

The grant award covered approximately half of the total ORCA-V1 clinical study costs. The Primary Investigators for the grant were our Chief Medical Officer, Dr. Cindy Jacobs, and Dr. Nancy Rigotti, Professor of Medicine at Harvard Medical School and Director, Tobacco Research and Treatment Center, Massachusetts General Hospital.

## 4. INTANGIBLES

All of our intangible assets are subject to amortization and are amortized using the straight-line method over their estimated useful life.

We acquired license and supply agreements in relation to cytisinicline upon the acquisition of Extab Corporation, or Extab, on May 18, 2015. The agreements were determined to have a fair value of \$3.1 million with an estimated useful life of 14 years.

The components of intangible assets were as follows:

	September 30, 2024			December 31, 2023		
	Gross Carrying Value	Accumulated Amortization	Net Carrying Value	Gross Carrying Value	Accumulated Amortization	Net Carrying Value
License Agreements	\$ 3,117	\$ (2,087)	\$ 1,030	\$ 3,117	\$ (1,920)	\$ 1,197

For the three and nine months ended September 30, 2024, we recorded license agreement amortization expense of \$0.1 million and \$0.2 million, respectively. For the three and nine months ended September 30, 2023, we recorded license agreement amortization expense of \$0.1 million and \$0.2 million, respectively. The following table outlines the estimated future amortization expense related to intangible assets held as of September 30, 2024:

Year Ending December 31,	
2024	56
2025	223
2026	223
2027	223
Thereafter	305
<b>Total</b>	<b>\$ 1,030</b>

We evaluate the carrying amount of intangible assets periodically by taking into account events or circumstances that may warrant revised estimates of useful life or that indicate the asset may be impaired. We conducted an analysis of potential impairment indicators for long lived assets, including the license and supply agreements for the active pharmaceutical ingredient cytisinicline, and concluded that there were no indicators of impairment identified as of September 30, 2024.

## 5. LICENSE AGREEMENTS

### *Sopharma License and Supply Agreements*

We are party to a license agreement, or the Sopharma License Agreement, and a supply agreement, or the Sopharma Supply Agreement, with Sopharma, AD, or Sopharma. Pursuant to the Sopharma License Agreement, we were granted access to all available manufacturing, efficacy and safety data related to cytisinicline, as well as a granted patent in several European countries related to new oral dosage forms of cytisinicline providing enhanced stability. Additional rights granted under the Sopharma License Agreement include the exclusive use of, and the right to sublicense, certain cytisinicline trademarks in all territories described in the Sopharma License Agreement. Under the Sopharma License Agreement, we agreed to pay a nonrefundable license fee. In addition, we agreed to make certain royalty payments equal to a mid-single digit percentage of all net sales of cytisinicline products in our territory during the term of the Sopharma License Agreement, including those sold by a third party pursuant to any sublicense which may be granted by us. To date, any amounts paid to Sopharma pursuant to the Sopharma License Agreement have been immaterial.

### *Share Purchase Agreement*

On May 14, 2015, we entered into a Share Purchase Agreement with Sopharma to acquire 75% of the outstanding shares of Extab for \$2.0 million in cash and \$2.0 million in a deferred payment, contingent on regulatory approval of cytisinicline by the FDA or the European Medicines Agency. The fair value of the contingent consideration on the acquisition date was nil. The contingent consideration liability is measured at fair value in our financial statements.

As of September 30, 2024, the fair value of the contingent consideration was estimated to be \$0.7 million. We recognized a loss of \$0.1 million and \$0.2 million for the three and nine months ended September 30, 2024, respectively.

## 6. FAIR VALUE MEASUREMENTS

Assets and liabilities recorded at fair value in the balance sheets are categorized based upon the level of judgment associated with the inputs used to measure their fair value. For certain of our financial instruments including amounts receivable and accounts payable the carrying values approximate fair value due to their short-term nature.

ASC 820 “Fair Value Measurements and Disclosures” specifies a hierarchy of valuation techniques based on whether the inputs to those valuation techniques are observable or unobservable. In accordance with ASC 820, these inputs are summarized in the three broad levels listed below:

- Level 1 – Quoted prices in active markets for identical securities.
- Level 2 – Other significant inputs that are observable through corroboration with market data (including quoted prices in active markets for similar securities).
- Level 3 – Significant unobservable input that reflects management’s best estimate of what market participants would use in pricing the asset or liability.

As quoted prices in active markets are not readily available for certain financial instruments, we obtain estimates for the fair value of financial instruments through third-party pricing service providers.

In determining the appropriate levels, we performed a detailed analysis of the assets and liabilities that are subject to ASC 820.

We invest our excess cash in accordance with investment guidelines that limit the credit exposure to any one financial institution other than securities issued by the U.S. Government. These securities are not collateralized and mature within one year.

A description of the valuation techniques applied to our financial instruments measured at fair value on a recurring basis follows.

### *Financial Instruments*

The following table presents information about our assets and liabilities that are measured at fair value on a recurring basis, and indicates the fair value hierarchy of the valuation techniques we utilized to determine such fair value (in thousands):

<u>September 30, 2024</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Total</u>
<b>Assets</b>				
Money market securities (cash equivalents)	\$ 9,262	\$ —	\$ —	\$ 9,262
Restricted cash	20	—	—	20
US government securities	—	16,126	—	16,126
Corporate bonds	—	17,241	—	17,241
<b>Total assets</b>	<b>\$ 9,282</b>	<b>\$ 33,367</b>	<b>\$ —</b>	<b>\$ 42,649</b>
<b>Liabilities</b>				
Convertible debt	\$ —	9,375	\$ —	\$ 9,375
Contingent consideration	—	—	699	699
<b>Total liabilities</b>	<b>\$ —</b>	<b>\$ 9,375</b>	<b>\$ 699</b>	<b>\$ 10,074</b>

### *Money Market Securities*

Money market securities are classified within Level 1 of the fair value hierarchy and are valued based on quoted prices in active markets for identical securities.

Cash equivalents consist of the following (in thousands):

<u>September 30, 2024</u>	<u>Amortized Cost</u>	<u>Gross Unrealized Gains</u>	<u>Gross Unrealized Losses</u>	<u>Estimated Fair Value</u>
Money market securities	\$ 9,262	\$ —	\$ —	\$ 9,262
<b>Total cash equivalents</b>	<b>\$ 9,262</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 9,262</b>
Money market securities (restricted cash)	\$ 20	\$ —	\$ —	\$ 20
<b>Total restricted cash</b>	<b>\$ 20</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 20</b>

We only invest in A (or equivalent) rated securities. All securities included in cash and cash equivalents had maturities of 90 days or less at the time of purchase.

#### **Corporate and Other Debt Corporate Bonds and Commercial Paper**

The fair value of corporate bonds and commercial paper is estimated using recently executed transactions, market price quotations (where observable), bond spreads or credit default swap spreads adjusted for any basis difference between cash and derivative instruments. The spread data used are for the same maturity as the bond. If the spread data does not reference the issuer, then data that reference a comparable issuer are used. When observable price quotations are not available, fair value is determined based on cash flow models with yield curves, bond or single name credit default swap spreads and recovery rates based on collateral values as significant inputs. Corporate bonds and commercial paper are generally categorized in Level 2 of the fair value hierarchy; in instances where prices, spreads or any of the other aforementioned key inputs are unobservable, they are categorized in Level 3 of the hierarchy.

<u>September 30, 2024</u>	<u>Amortized Cost</u>	<u>Gross Unrealized Gains</u>	<u>Gross Unrealized Losses</u>	<u>Estimated Fair Value</u>
US government securities	\$ 16,093	\$ —	\$ 34	\$ 16,127
Corporate bonds	17,203	—	37	17,240
<b>Total short term investments</b>	<b>\$ 33,296</b>	<b>\$ —</b>	<b>\$ 71</b>	<b>\$ 33,367</b>

#### **Concentration of Cash and Cash Equivalents Risk**

We place our cash in a custodial account and in commercial checking and sweep accounts with various financial institutions.

As of September 30, 2024, approximately \$40.4 million in cash equivalents and short-term investments is held in a custodial account with U.S. Bank, for which SVB Asset Management is the advisor; and approximately \$0.1 million of our cash and \$1.7 million of our cash equivalents is held in a single financial institution, SVB, as required by the covenants of the Debt Agreement (Note 7 – Convertible Debt).

Our commercial bank balances exceed federal insurance limits. We have not experienced any losses in our cash and cash equivalents for the nine months ended September 30, 2024 and 2023.

#### **Fair Value of Debt**

##### **Convertible Debt**

The principal amount, carrying value and related estimated fair value of our convertible debt reported in the consolidated balance sheets as of September 30, 2024 and December 31, 2023 was as follows (in thousands). The aggregate fair value of the principal amount of the convertible debt is a Level 2 fair value measurement.

	<u>September 30, 2024</u>			<u>December 31, 2023</u>		
	<u>Principal Amount</u>	<u>Carrying Value</u>	<u>Fair Value</u>	<u>Principal Amount</u>	<u>Carrying Value</u>	<u>Fair Value</u>
2023 SVB Convertible Debt	\$ —	\$ —	\$ —	\$ 15,000	\$ 16,662	\$ 16,652

	<u>September 30, 2024</u>			<u>December 31, 2023</u>		
	<u>Principal Amount</u>	<u>Carrying Value</u>	<u>Fair Value</u>	<u>Principal Amount</u>	<u>Carrying Value</u>	<u>Fair Value</u>
2024 SVB Convertible Debt	\$ 10,000	\$ 9,823	\$ 9,375	\$ —	\$ —	\$ —

#### **Fair Value of Sopharma Share Purchase Agreement Contingent Consideration**

We determine the fair value of the contingent consideration using a probability based discounted cash flow model whereby we forecast the timing of the cash flow of the related future payment based on cytisinicline's current clinical development phase and the remaining requirements for regulatory approval. We then discount the expected payment amount to calculate the present value and then apply a probability of success in obtaining regulatory approval as of the valuation date. We evaluate the underlying projection used in determining the fair value each period and make updates as necessary.

The significant assumptions we use to value the contingent consideration are the forecasted timing of the future payment, the risk-adjusted discount rate and the probability of success which are all considered significant unobservable inputs, and as such, the liability is classified as a Level 3 measurement. The risk-adjusted discount rate is adjusted for credit risk.

An increase in the discount rate and decrease in the probability of success will result in a decrease in the fair value of the contingent consideration. Conversely, a decrease in the discount rate and increase in the probability of success will result in an increase in the fair value of the contingent consideration. As of September 30, 2024 the risk adjusted discount rate was 38.0% and the probability of success was 67.2%. Adjustments to the fair value of the contingent liabilities, other than payments, are recorded as a gain or loss in the Consolidated Statements of Loss and Comprehensive Loss.

The following table presents the changes in fair value of our total Level 3 financial liabilities for the nine months ended September 30, 2024:

<i>(in thousands)</i>	Balance at December 31, 2023	Change in Fair Value	Balance at September 30, 2024
Contingent consideration	\$ 528	\$ 171	\$ 699

## 7. CONVERTIBLE DEBT

### *Convertible Debt*

On December 22, 2021, we entered into a \$25.0 million contingent convertible debt agreement, or Original Debt Agreement, with Silicon Valley Bank, or SVB, and SVB Innovation Credit Fund VIII, L.P., or together with SVB, the Lenders. As part of the Original Debt Agreement, the Lenders funded \$15.0 million in the form of convertible indebtedness, or Convertible Debt, at closing. On April 26, 2022, we entered into (i) a loan and security agreement, or Loan Agreement, with SVB for the remaining \$10.0 million remaining in the Original Debt Agreement, pursuant to which SVB provided a commitment to extend term loans having an aggregate original principal amount of up to \$10.0 million, or Term Loans, and (ii) a first amendment to the Original Debt Agreement, or the Amendment, and as amended by the Amendment, the Debt Agreement. The availability of Term Loans under the Loan Agreement expired on April 30, 2023, with no amounts drawn under the facility.

On May 15, 2023, we entered into a contingent convertible debt agreement, or Debt Agreement, with the Lenders, pursuant to which the Lenders provided term loans having an aggregate original principal amount of \$16.6 million, or the Convertible Term Loan. The Convertible Debt under the Original Debt Agreement was refinanced as the Convertible Term Loan pursuant to the Debt Agreement. Our obligations under the Loan Agreement, Original Debt Agreement and Convertible Debt were satisfied in full and the Loan Agreement, Original Debt Agreement and Convertible Debt were terminated in connection with the entrance into the Debt Agreement and Convertible Term Loan.

On July 25, 2024, we entered into a contingent convertible debt agreement, or New Debt Agreement, with SVB, a division of FCB, in its capacity as administrative agent and collateral agent, and FCB, as a lender, or Lender, pursuant to which the Lender provided term loans having an aggregate original principal amount of \$10.0 million, with additional term loans of up to \$10.0 million available upon the occurrence of certain events as provided for in the New Debt Agreement and further described below, or New Convertible Term Loan. Our obligations under the New Debt Agreement are secured by substantially all of our assets, other than intellectual property.

The New Debt Agreement refinanced the Debt Agreement. Our obligations under the Debt Agreement and Convertible Term Loan were satisfied in full and the Debt Agreement and Convertible Term Loan were terminated in connection with the entrance into the New Debt Agreement and New Convertible Term Loan.

The New Convertible Term Loan matures on December 1, 2027, which maturity date may be extended to June 1, 2028 upon the occurrence of certain events as provided for in the New Debt Agreement. The first tranche of the New Convertible Term Loan, which was advanced on July 25, 2024, has an aggregate original principal amount of \$10.0 million. The Lender will further make available to us, upon our request: (a) on or prior to October 31, 2025, a second tranche of the New Convertible Term Loan having an aggregate principal amount of \$5.0 million in the event that we receive written notice that the FDA has accepted for filing our NDA with respect to cytisinicline for a smoking cessation indication, or the Additional Term Loan Event I, and (b) on or prior to December 31, 2025, a third tranche of the New Convertible Term Loan having an aggregate principal amount of \$5.0 million, subject to the Lender's sole discretion. Interest is calculated on the outstanding principal amount of the New Convertible Term Loan at a floating rate per annum equal to the greater of (i) 7.0% and (ii) the prime rate minus 1.0%, which interest shall be payable in cash monthly in arrears and shall

be payable on the earlier to occur of (x) the first day of the first month following any extension of credit by the Lender for our credit, (y) the date of any prepayment pursuant to the New Debt Agreement, or (z) the maturity date. The New Convertible Term Loan will be “interest-only” until December 31, 2025, subject to extension as provided for in the New Debt Agreement. The “interest-only” period may be extended to June 30, 2026, if (i) prior to December 31, 2025, we have received at least \$40,000,000 in net cash proceeds from the issuance equity interests and (ii) the conditions of Additional Term Loan Event I (as defined in the New Debt Agreement) have been satisfied.

Subject to certain terms and conditions, the conversion feature grants the Lender or, pursuant to an assignment, any designee thereof, or Conversion Right Holders, the right to convert part or all of the outstanding aggregate original principal amount of the New Convertible Term Loan, plus accrued and unpaid interest, into shares of our common stock at a conversion price equal to \$7.00, subject to customary adjustment provisions. The Conversion Right Holders have the further right to convert part or all of the outstanding principal amount of the second and third tranches of the New Convertible Term Loan, plus accrued and unpaid interest, into shares of our common stock at a conversion price equal to the greater of (i) \$4.854, subject to customary adjustment provisions, and (ii) the lower of (a) 150% of the average of the closing sale price of our common stock during the 10 trading days preceding the effective date of such tranche and (b) 150% of the closing sale price of our common stock on the trading day immediately preceding the effective date of such tranche.

The conversion rights may be exercised at each Conversion Right Holder's option any time prior to repayment of the New Convertible Term Loan; provided, however, that the Conversion Right Holders will not be permitted to convert part or all of the outstanding aggregate original principal amount of the New Convertible Term Loan without the agreement of the relevant Conversion Right Holder and us if the sum of the amount of debt to be converted; and the aggregate amount of debt previously converted pursuant to any such voluntary conversion, divided by the aggregate of all debt that is then outstanding or that has been repaid other than by conversion exceeds 50%.

Additionally, the outstanding principal of the New Convertible Term Loan, plus accrued and unpaid interest, will automatically be converted into shares of our common stock at the applicable conversion price on such date if any, when the closing price per share of our common stock has been equal to or greater than (a) in the case of the outstanding aggregate original principal amount of the New Convertible Term Loan, plus accrued and unpaid interest, \$24.00 or, (b) in the case of the outstanding principal amount of the second and third tranches of the New Convertible Term Loan, plus accrued and unpaid interest, three times the applicable conversion price, in each case for the thirty consecutive trading days prior to such date, and the Liquidity Conditions (as defined in the New Debt Agreement) have been satisfied.

The New Convertible Term Loan may be repaid at our election and upon notice to the Agent (as defined in the New Debt Agreement) by paying the Lender an amount equal to (i) a prepayment fee equal to (a) 3.0% of the aggregate outstanding principal balance if such prepayment occurs on or prior to the first anniversary of the New Convertible Term Loan, (b) 2.0% of the aggregate outstanding principal balance if such prepayment occurs after the first anniversary, but on or prior to the second anniversary, of the New Convertible Term Loan or (c) 1.0% of the aggregate outstanding principal balance if such prepayment occurs after the second anniversary of the New Convertible Term Loan and before the maturity date; (ii) 4.0% of the original aggregate principal amount of the New Convertible Term Loan and (iii) all other sums due and payable under the New Convertible Term Loan.

The New Debt Agreement contains customary affirmative and restrictive covenants, including covenants regarding the incurrence of additional indebtedness or liens, investments, transactions with affiliates, delivery of financial statements, payment of taxes, maintenance of insurance, dispositions of property, mergers or acquisitions, among other customary covenants. We are also restricted from paying dividends or making other distributions or payments on our capital stock, subject to limited exceptions. The New Debt Agreement also includes customary representations and warranties, events of default and termination provisions. The Lender may not engage in any short sales of, or other hedging transactions in, our common stock while any amounts are outstanding under the New Debt Agreement.

In connection with the New Debt Agreement, we entered into a Registration Rights Agreement, or RRA, with the Lender, pursuant to which we are required to register for resale shares of our common stock issuable to the Conversion Right Holders upon the conversion of outstanding debt under the New Debt Agreement. Our obligations under the RRA will terminate with respect to a holder of applicable registrable securities if, as of the date we would be required to provide written notice of such registration, (x) the aggregate number of registrable securities then issued and issuable to such holder and to such holder's affiliates, together with all other shares then held beneficially and/or of record by such holder and its affiliates, does not exceed 7.0% of our then-total shares issued and outstanding (calculated including all such registrable securities and other shares), or (y) we and such holder mutually reasonably agree that all registrable securities then issued and issuable to such holder and its affiliates may then be sold by such holder without the requirement to be in compliance with Rule 144 promulgated under the Securities Act, or Rule 144, and otherwise without restriction or limitation pursuant to Rule 144.

Under ASU 2020-06 the embedded conversion feature was not required to be bifurcated and recognized separately, as a result the convertible debt including the conversion feature has been recognized as a single unit of debt.

The debt refinancing under the New Debt Agreement was recognized as an extinguishment of debt under ASC 470-50, and the difference between the reacquisition price and carrying value was recognized on the Consolidated Statement of Loss as a loss on extinguishment of debt. Associated third-party issuance costs have been recognized against the single unit of debt and will be amortized into interest expense over the term of the loan.

As of September 30, 2024 and December 31, 2023, the Convertible Term Loan and New Convertible Term Loan balances were comprised of the following:

	<u>September 30,</u> <u>2024</u>	<u>December 31,</u> <u>2023</u>
<b>Convertible Term Loan Information</b>		
Principal	\$ —	\$ 15,000
Transaction costs	—	(5)
Accrued paid-in-kind interest	—	2,311
Discount on modification of debt	—	(1,074)
Accretion of discount on modification of debt	—	430
	<u>—</u>	<u>16,662</u>
	<u>September 30,</u> <u>2024</u>	<u>December 31,</u> <u>2023</u>
<b>New Convertible Term Loan Information</b>		
Principal	\$ 10,000	\$ —
Transaction costs	(186)	—
Amortization of transaction costs	9	—
	<u>9,823</u>	<u>—</u>

## 8. COMMON STOCK

### [a] Authorized

150,000,000 authorized common shares, par value of \$0.001, and 5,000,000 preferred shares, par value of \$0.001.

### [b] Issued and outstanding shares

#### *Virtu At-the-Market Sales Agreement*

On December 21, 2021, we entered into an At-the-Market Offering Sales Agreement, or ATM, with Virtu Americas, LLC, as sales agent. The ATM was terminated on February 29, 2024, and no further sales of our common stock will be made pursuant to the ATM.

Since entry into the ATM, through the date of termination of the ATM, we offered and sold an aggregate of 200,000 shares of our common stock. These aggregate sales resulted in gross proceeds to us of approximately \$1.5 million. During the three and nine months ended September 30, 2024, we did not sell any shares of our common stock pursuant to the ATM.

#### *May 2023 Registered Direct Offering*

In May 2023, we entered into a securities purchase agreement with certain purchasers, pursuant to which we sold 3,000,000 shares of common stock at a price of \$5.50 per share in a registered direct offering. The offering of the shares was made pursuant to our shelf registration statement on Form S-3 including the prospectus dated January 5, 2022 contained therein, and the prospectus supplement dated May 25, 2023.

We received approximately \$15.3 million in net proceeds from the registered direct offering after deducting placement agent fees and offering expenses.

#### *February 2024 Registered Direct Offering and Concurrent Private Placement*



In February 2024, we entered into a securities purchase agreement with certain purchasers, pursuant to which we sold 13,086,151 shares of common stock at a price of \$4.585 per share in a registered direct offering. The offering of the shares was made pursuant to our shelf registration statement on Form S-3, including the prospectus dated January 5, 2022 contained therein, and the prospectus supplement dated February 28, 2024.

In a concurrent private placement, we issued unregistered warrants to purchase up to 13,086,151 shares of common stock at an exercise price of \$4.906 per share (provided, however, that the purchaser may elect to exercise the warrants for pre-funded warrants in lieu of shares of common stock at an exercise price of \$4.906, minus \$0.001, the exercise price of each pre-funded warrant). These warrants are immediately exercisable for shares of common stock or pre-funded warrants in lieu thereof, and will expire on the earlier of (i) three and one-half years following the date of issuance and (ii) 30 days following our public disclosure of the acceptance of an NDA for cytisinicline by the FDA in a Day 74 Letter or equivalent correspondence. The shares of common stock issuable upon exercise of the warrants (or pre-funded warrants, as applicable) were subsequently registered pursuant to our registration statement on Form S-3, which was declared effective on May 6, 2024.

The registered direct offering raised total gross proceeds of approximately \$60.0 million, and after deducting approximately \$3.9 million in placement agent fees and offering expenses, we received net proceeds of approximately \$56.1 million.

#### *Jefferies Open Market Sales Agreement*

On September 27, 2024, we entered into an Open Market Sale Agreement, or Sale Agreement, with Jefferies LLC, or Jefferies, as sales agent, to establish an at-the-market offering program through which we may sell shares of our common stock with an aggregate offering price of up to \$50.0 million. During the three and nine months ended September 30, 2024, we did not sell any shares under the Sale Agreement. As of September 30, 2024, we had \$50.0 million available under the Sale Agreement.

#### *Equity Award Issuances and Settlements*

During the three and nine months ended September 30, 2024, we did not issue any shares of common stock to satisfy stock option exercises. During the three and nine months ended September 30, 2024 we issued zero and 113,125 shares of common stock, respectively, to satisfy restricted stock unit settlements. During the three and nine months ended September 30, 2023, we did not issue any shares of common stock to satisfy stock option exercises. During the three and nine months ended September 30, 2023 we issued zero and 139,750 shares of common stock, respectively, to satisfy restricted stock unit settlements.

#### **[c] Stock options**

##### *2023 Non-Employee Director Equity Incentive Plan*

As of September 30, 2024, we had reserved, pursuant to the 2023 Non-Employee Director Equity Incentive Plan, or the 2023 Non-Employee Director Plan, 300,000 shares of common stock for issuance upon exercise of stock options by non-employee directors, of which 290,250 shares were reserved for options currently outstanding and 9,750 shares were available for future equity grants.

Under the 2023 Non-Employee Director Plan, we may grant options to purchase shares of our common stock or restricted stock units to our non-employee directors. The exercise price of the options is determined by our board of directors, or Board, but will be at least equal to the fair value of the shares of common stock at the grant date. The options vest in accordance with terms as determined by our Board, typically over one to three years. The expiration date for each option is set by our Board with a maximum expiration date of ten years from the date of grant. In addition, the 2023 Non-Employee Director Plan allows for accelerated vesting of outstanding equity awards in the event of a change in control.

#### *2018 Equity Incentive Plan*

As of September 30, 2024, we had reserved, pursuant to the 2018 Equity Incentive Plan, or the 2018 Plan, 2,667,416 shares of common stock for issuance upon exercise of stock options and settlement of restricted stock units by employees, directors, officers and consultants of ours, of which 1,489,905 were reserved for options currently outstanding, 1,115,750 for restricted stock units currently outstanding, and 61,761 were available for future equity grants.

Under the 2018 Plan, we may grant options to purchase common shares or restricted stock units to our employees, directors, officers and consultants. The exercise price of the options is determined by our Board, but will be at least equal to the fair value of the shares of common stock at the grant date. The options vest in accordance with terms as determined by our Board, typically over three to four years for options issued to employees and consultants, and over one to three years for members of our Board. The expiry date for each option is set by our Board with a maximum expiration date of ten years from the date of grant. In addition, the 2018 Plan allows for accelerated vesting of outstanding equity awards in the event of a change in control. The terms for accelerated vesting, in the event of a change in control, is determined at our discretion and defined under the employment agreements for our officers and certain of our employees.

#### *New Employee Inducement Grants*

We grant stock options as a material inducement to new employees for entering into employment agreements with us in accordance with Nasdaq Listing Rule 5635(c)(4). The stock options approved under the inducement grants are issued pursuant to a stock option agreement on terms substantially similar to those described in our 2018 Plan. The exercise price of the options is determined by our Board but will be at least equal to the fair value of the common shares at the grant date. The options vest in accordance with terms as determined by our Board. The expiration date for each option is set by our Board with a maximum expiration date of ten years from the date of grant. For the three and nine months ended September 30, 2024, we did not grant any inducement stock options to new employees. As of September 30, 2024, 135,000 stock options granted as new employee inducement grants were outstanding.

#### *2017 Equity Incentive Plan*

As of September 30, 2024, we had reserved, pursuant to the 2017 Equity Incentive Plan, or the 2017 Plan, 13,156 shares of common stock for issuance upon exercise of currently outstanding stock options by employees, directors and officers of ours. Upon the effectiveness of our 2018 Plan, we ceased granting equity awards under our 2017 Plan.

Under the 2017 Plan, we granted options to purchase shares of common stock or restricted stock units to our employees, directors, officers and consultants. The exercise price of the options was determined by our Board but was at least equal to the fair value of the shares of common stock at the grant date. The options vest in accordance with terms as determined by our Board, typically over three to four years for options issued to employees and consultants, and over one to three years for members of our Board. The expiration date for each option was set by our Board with a maximum expiration date of ten years from the date of grant. In addition, the 2017 Plan allows for accelerated vesting of outstanding equity awards in the event of a change in control. The terms for accelerated vesting, in the event of a change in control, is determined at our discretion and defined under the employment agreements for our officers and certain of our employees.

#### *2010 Performance Incentive Plan*

As of September 30, 2024, we had reserved, pursuant to the 2010 Performance Incentive Plan, or the 2010 Plan, 103 shares of common stock for issuance upon exercise of currently outstanding stock options by employees, directors and officers of ours. Upon the effectiveness of our 2017 Plan, we ceased granting equity awards under our 2010 Plan.

Under the 2010 Plan we granted options to purchase shares of common stock and restricted stock units to our employees, directors, officers and consultants. The exercise price of the options was determined by our Board and was at least equal to the fair value of the

shares of common stock at the grant date. The options vest in accordance with terms as determined by our Board, typically over three to four years for options issued to employees and consultants, and over one to three years for members of our Board. The expiration date for each option is set by our Board with a maximum expiration date of ten years from the date of grant. In addition, the 2010 Plan allows for accelerated vesting of outstanding equity awards in the event of a change in control. The terms for accelerated vesting, in the event of a change in control, is determined at our discretion and defined under the employment agreements for our officers and certain of our employees.

#### Stock Option Summary

We grant stock options that vest over time in accordance with terms as determined by our Board, which are typically four years for employee and consultant grants and one to three years for Board option grants. We also grant stock option awards that vest in conjunction with certain performance conditions to executive officers, employees and consultants. At each reporting date, we are required to evaluate whether achievement of the performance conditions is probable. Compensation expense is recorded over the appropriate service period based upon our assessment of accomplishing each performance condition. The expiration date for each option is set by our Board, which is typically seven to ten years. The exercise price of the options is determined by our Board.

Stock option transactions and the number of stock options outstanding are summarized below:

	Number of Optioned Common Shares	Weighted Average Exercise Price
<b>Balance, December 31, 2023</b>	<b>1,461,980</b>	<b>\$ 12.12</b>
Granted	466,500	4.55
Expired	(66)	17,565.33
<b>Balance, September 30, 2024</b>	<b>1,928,414</b>	<b>\$ 9.69</b>

The fair value of each stock award for employees and directors is estimated on the grant date and for consultants at each reporting period, using the Black-Scholes option-pricing model based on the weighted-average assumptions noted in the following table:

	Nine Months Ended September 30,	
	2024	2023
Risk-free interest rates	4.00 %	3.60 %
Expected dividend yield	0 %	0 %
Expected life	5.65 years	5.75 years
Expected volatility	90.15 %	115.19 %
Forfeiture rate	0.00 %	0.00 %

The expected life was calculated based on the simplified method as permitted by the SEC's Staff Accounting Bulletin 110, *Share-Based Payment*. We consider the use of the simplified method appropriate because of the lack of sufficient historical exercise data following the 2017 Merger Agreement between Achieve Life Sciences, Inc. and OncoGenex Pharmaceuticals. The computation of expected volatility was calculated based on the historical volatility of the shares of our common stock. The risk-free interest rate is based on a U.S. Treasury instrument whose term is consistent with the expected life of the stock options. In addition to the assumptions above, as required under ASC 718, management made an estimate of expected forfeitures and is recognizing compensation costs only for those equity awards expected to vest. Forfeiture rates are estimated using historical actual forfeiture rates. These rates are adjusted on a quarterly basis and any change in compensation expense is recognized in the period of the change. We have never paid or declared cash dividends on our common stock and do not expect to pay cash dividends in the foreseeable future.

The results for the periods set forth below included share-based compensation expense for stock options, restricted stock units and employee share purchase plan compensation expenses in the following expense categories of the consolidated statements of loss (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Research and development	\$ 416	\$ 387	\$ 1,315	\$ 1,173
General and administrative	\$ 924	787	2,767	2,276
<b>Total stock-based compensation</b>	<b>\$ 1,340</b>	<b>\$ 1,174</b>	<b>\$ 4,082</b>	<b>\$ 3,449</b>

As of September 30, 2024, the total unrecognized compensation expense related to stock options granted was \$2.4 million, which is expected to be recognized as expense over a period of approximately 1.49 years from September 30, 2024.

**[d] Loss Per Share**

For the nine months ended September 30, 2024, a total of 21,219,343 shares, consisting of warrants to purchase 18,175,179 shares, options exercisable for 1,928,414 shares and 1,115,750 restricted stock units, have not been included in the loss per share computation, as their effect on diluted per share amounts would have been anti-dilutive. For the same period in 2023, a total of 7,090,100 shares underlying options, restricted stock units and warrants have not been included in the loss per share computation. Additionally, the outstanding New Convertible Term Loan is included in the calculation of diluted per share amounts only if its inclusion is dilutive for periods during which the notes were outstanding. As of September 30, 2024, the outstanding New Convertible Term Loan was not included in the calculation of diluted per share amounts as its effect would have been anti-dilutive.

**[e] Restricted Stock Unit Awards**

We grant restricted stock unit awards that generally vest and are expensed over a four-year period. We also grant restricted stock unit awards that vest in conjunction with certain performance conditions to certain executive officers, key employees and consultants. At each reporting date, we are required to evaluate whether achievement of the performance conditions is probable. Compensation expense is recorded over the appropriate service period based upon our assessment of accomplishing each performance condition. For the three and nine months ended September 30, 2024, we recorded a compensation expense of \$0.2 million and \$1.4 million, respectively, related to these awards, compared to \$0.5 million and \$1.5 million for the three and nine months ended September 30, 2023.

The following table summarizes our restricted stock unit award activity during the nine months ended September 30, 2024:

	Number of Shares	Weighted Average Grant Date Fair Value
<b>Balance, December 31, 2023</b>	<b>507,875</b>	<b>\$ 5.65</b>
Granted	721,000	4.55
Released	(113,125)	8.26
<b>Balance, September 30, 2024</b>	<b>1,115,750</b>	<b>\$ 4.67</b>

As of September 30, 2024, we had approximately \$2.2 million in total unrecognized compensation expense related to our restricted stock unit awards that is to be recognized over a weighted-average period of approximately 1.00 years.

**[f] Non-employee options and restricted stock units**

We recognize non-employee stock-based compensation expense over the period of expected service by the non-employee. As the service is performed, we are required to update our valuation assumptions, re-measure unvested options and restricted stock units and record the stock-based compensation using the valuation as of the vesting date. This differs from the accounting for employee awards where the fair value is determined at the grant date and is not subsequently adjusted. This re-measurement may result in higher or lower stock-based compensation expense in the Consolidated Statements of Loss and Comprehensive Loss. As such, changes in the market price of our stock could materially change the value of an option or restricted stock unit and the resulting stock-based compensation expense.

**[g] Employee Share Purchase Plan**

Our Board and stockholders approved the 2017 Employee Stock Purchase Plan, or ESPP, in August 2017. Contributions are made by eligible employees, subject to certain limits defined in the ESPP. The number of shares available for future purchases under the ESPP is 507,627 shares. All shares purchased under the ESPP are new share issuances. For the three and nine months ended September 30, 2024, we recorded a compensation expense of nil and \$0.1 million, respectively, related to the current ESPP offering period. For the three and nine months ended September 30, 2023, no compensation expense was recognized related to our ESPP as we did not have an active offering period.

During the three months ended September 30, 2024 no shares were issued under the ESPP, and during the nine months ended September 30, 2024 48,643 shares were issued under the ESPP. During the three and nine months ended September 30, 2023 no shares were purchased under the ESPP.

**[h] Common Stock Warrants**

The following is a summary of outstanding warrants to purchase common stock as of September 30, 2024:

	Total Outstanding and Exercisable	Exercise price per Share	Expiration Date
(1) Warrants issued in May 2019 financing	60,000	\$ 90.000	May 2025
(2) Warrants issued in December 2019 financing	510,924	\$ 2.310	December 2024
(3) Warrants issued in April 2020 financing	182,461	\$ 7.240	April 2025
(4) Warrants issued in April 2020 financing	24,375	\$ 7.320	April 2025
(5) Warrants issued in April 2020 financing	25,270	\$ 7.590	April 2025
(6) Pre-Funded warrants issued in August 2020 financing	142,857	\$ 0.001	*
(7) Warrants issued in December 2020 financing	50,000	\$ 8.750	December 2025
(8) Warrants issued in November 2022 financing	4,093,141	\$ 4.500	November 2029
(9) Warrants issued in February 2024 financing	13,086,151	\$ 4.906	**

\*The pre-funded warrants do not have an expiration date.

\*\*These warrants, the 2024 Warrants, have an exercise price of \$4.906 per share (provided, however, that the purchaser may elect to exercise the warrants for pre-funded warrants in lieu of shares of common stock at an exercise price of \$4.906, minus \$0.001, the exercise price of each pre-funded warrant). These warrants are immediately exercisable for shares of common stock or pre-funded warrants in lieu thereof, and will expire on the earlier of (i) three and one-half years following the date of issuance and (ii) 30 days following our public disclosure of the acceptance of an NDA for cytosine nucleoside by the FDA in a Day 74 Letter or equivalent correspondence.

The agreements governing the above warrants include the following terms:

- certain warrants have exercise prices which are subject to adjustment for certain events, including the issuance of stock dividends on our common stock and, in certain instances, the issuance of our common stock or instruments convertible into our common stock at a price per share less than the exercise price of the respective warrants (specifically those issued under the December 2019 Public Offering and November 2022 Private Placement);
- warrant holders may exercise the warrants through a cashless exercise if, and only if, we do not have an effective registration statement then available for the issuance of the shares of our common stock. If an effective registration statement is available for the issuance of our common stock a holder may only exercise the warrants through a cash exercise;
- the exercise price and the number and type of securities purchasable upon exercise of the warrants are subject to adjustment upon certain corporate events, including certain combinations, consolidations, liquidations, mergers, recapitalizations, reclassifications, reorganizations, stock dividends and stock splits, a sale of all or substantially all of our assets and certain other events;
- in the case of certain warrants, in the event of an “extraordinary transaction” or a “fundamental transaction” (as such terms are defined in the respective warrant agreements), generally including any merger with or into another entity, sale of all or substantially all of the Company’s assets, tender offer or exchange offer, or reclassification of its common stock, in which the successor entity (as defined in the respective warrant agreements) that assumes the successor entity is not a publicly traded company, the Company or any successor entity will pay the warrant holder, at such holder’s option, exercisable at any time concurrently with or within 30 days after the consummation of the extraordinary transaction or fundamental transaction, an amount of cash equal to the value of such holder’s warrants as determined in accordance with the Black Scholes option pricing model and the terms of the respective warrant agreement. In some circumstances, we or successor entity may be obligated to make such payments regardless of whether the successor entity that assumes the warrants is a publicly traded company; and
- with respect to the 2024 Warrants, in the event we consummate a “fundamental transaction,” as described in the 2024 Warrants and generally including a merger or consolidation with or into another person or other reorganization event in which our common shares are converted or exchanged for securities, cash or other property and we are not the surviving entity and in which our stockholders immediately prior to the merger or consolidation do not own, directly or indirectly, at

least 50% of the voting power of the surviving entity immediately after such merger or consolidation (excluding any merger effected solely to change the company's name), or we sell, lease, license, assign, transfer, convey or otherwise dispose of all or substantially all of our assets or we or another person acquire 50% or more of our outstanding shares of common stock, then following such event, the holders of the 2024 Warrants will be entitled to receive upon exercise of such 2024 Warrants the same kind and amount of securities, cash or property which the holders would have received had they exercised their 2024 Warrants immediately prior to such fundamental transaction. Any successor to us or surviving entity shall assume the obligations under the 2024 Warrants. Additionally, as more fully described in the 2024 Warrants, in the event of certain fundamental transactions, the holders of the 2024 Warrants will be entitled to receive consideration in an amount equal to the Black Scholes value of the 2024 Warrants on the date of consummation of such transaction.

No warrants were exercised for the nine months ended September 30, 2024. For the nine months ended September 30, 2023, warrants to purchase 98,333 shares, issued in the December 2019 financing, were exercised at a per share price of \$2.31, for proceeds of \$0.2 million. As of September 30, 2024, all of our outstanding warrants were classified as equity.

## 9. COMMITMENTS AND CONTINGENCIES

The following table summarizes our contractual obligations as of September 30, 2024 (in thousands):

	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
Vancouver office operating lease	\$ 22	\$ 22	\$ —	\$ —	\$ —
<b>Total</b>	<b>\$ 22</b>	<b>\$ 22</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>

### Leases

We have operating leases for our corporate offices.

Operating leases with a term of 12 months or longer are included in ROU assets, other current liabilities, and operating lease liabilities on our consolidated balance sheets. Finance leases are included in property and equipment, other current liabilities, and other long-term liabilities on our consolidated balance sheets.

Operating lease ROU assets and operating lease liabilities are recognized based on the present value of the future minimum lease payments over the lease term at commencement date. As most of our leases do not provide an implicit rate, we use the incremental borrowing rate of comparable companies from a representative peer group selected based on industry and market capitalization. The operating lease ROU asset also includes any lease payments made and excludes lease incentives and initial direct costs incurred. Our lease terms may include options to extend or terminate the lease when it is reasonably certain that we will exercise that option. Lease expense for minimum lease payments is recognized on a straight-line basis over the lease term.

### Vancouver lease arrangement

On November 19, 2018, we entered into a lease agreement, or the Vancouver Lease, for office space in Vancouver, British Columbia, which commenced on February 1, 2019 and had a four-year term. Pursuant to the terms of the lease agreement, we rent approximately 2,367 square feet of office space. On December 16, 2022, we entered into an agreement to extend the lease for another two-year term, which commenced on February 1, 2023. The annual rent is approximately \$0.1 million.

Consolidated rent expense relating to the Vancouver, British Columbia office, for the three and nine months ended September 30, 2024 was \$29,000 and \$0.1 million, respectively, and for the three and nine months ended September 30, 2023 was \$29,000 and \$0.1 million, respectively.

Other information related to leases was as follows:

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2024	2023	2024	2023
<b>Supplemental Cash Flow Information</b>				
Cash paid for amounts included in the measurement of lease liabilities:				
Operating cash flows to operating leases	\$ 16	\$ 15	\$ 47	\$ 43
Right-of-use assets obtained in exchange for lease obligations:				
Operating leases	—	—	—	—
Weighted Average Remaining Lease Term				
Operating leases	0.33 years	1.33 years	0.33 years	1.33 years
Weighted Average Discount Rate				
Operating leases	8.98 %	8.98 %	8.98 %	8.98 %

#### *Guarantees and Indemnifications*

We indemnify our officers, directors and certain consultants for certain events or occurrences, subject to certain limits, while the officer or director is or was serving at its request in such capacity. The term of the indemnification period is equal to the officer's or director's lifetime.

The maximum amount of potential future indemnification is unlimited; however, we have obtained director and officer insurance that limits our exposure and may enable us to recover a portion of any future amounts paid. We believe that the fair value of these indemnification obligations is minimal. Accordingly, we have not recognized any liabilities relating to these obligations as of September 30, 2024.

We have certain agreements with certain organizations with which we do business that contain indemnification provisions pursuant to which we typically agree to indemnify the party against certain types of third-party claims. We accrue for known indemnification issues when a loss is probable and can be reasonably estimated. There were no accruals for, or expenses related to, indemnification issues for any period presented.

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

### Overview

Our focus is to address the global nicotine addiction epidemic in combustible cigarette and e-cigarette usage through the development and commercialization of cytisinicline. There are an estimated 29 million adults in the United States alone who smoke combustible cigarettes. Tobacco use is currently the leading cause of preventable death and is responsible for more than 8.0 million deaths worldwide and nearly half a million deaths in the United States annually. More than 87% of lung cancer deaths, 61% of all pulmonary disease deaths, and 32% of all deaths from coronary heart disease are attributable to smoking and exposure to secondhand smoke.

In addition, there are approximately 11 million adults in the United States who use e-cigarettes, also known as vaping. While nicotine e-cigarettes are thought to be less harmful than combustible cigarettes, they remain addictive and can deliver harmful chemicals which can cause lung injury or cardiovascular disease. In 2024, 1.6 million high school and middle school students reported using e-cigarettes. Research shows adolescents who have used e-cigarettes are seven times more likely to become smokers one year later compared to those who have never vaped. Recently, the U.S. Food and Drug Administration, or FDA, granted Breakthrough Therapy designation for cytisinicline for nicotine e-cigarette, or vaping, cessation. Breakthrough Therapy designation allows expedited development of drugs that are intended to treat serious conditions, when preliminary clinical evidence indicates that the drug demonstrates substantial improvement over available therapies. Currently, there are no FDA approved therapies indicated specifically as an aid to nicotine e-cigarette cessation.

Cytisinicline is a plant-based alkaloid with a high binding affinity to the nicotinic acetylcholine receptor. It is believed to aid in treating nicotine addiction for smoking and e-cigarette cessation by interacting with nicotine receptors in the brain, reducing the severity of withdrawal symptoms, and reducing the reward and satisfaction associated with nicotine products. Cytisinicline is an investigational product candidate being developed for treatment of nicotine addiction and has not been approved by the FDA for any indication in the United States.

We believe cytisinicline represents a unique opportunity to significantly impact global health by addressing the considerable unmet need among millions of smokers and e-cigarettes users. If approved by the FDA, it may become one of the first new prescription medicines in nearly two decades aimed at aiding individuals in overcoming nicotine dependence. We believe cytisinicline is differentiated from existing smoking cessation treatments given its combination of robust efficacy, minimal frequency of side effects and optional shorter course of therapy.

We have no products approved for commercial sale and have not generated any revenue from product sales to date. We have never been profitable and have incurred operating losses in each year since inception. Our net loss was \$27.5 million for the nine months ended September 30, 2024. As of September 30, 2024, we had an accumulated deficit of \$193.2 million, cash, cash equivalents and short-term investments balance of \$42.9 million and a positive working capital balance of \$38.8 million. For the nine months ended September 30, 2024, net cash used in operating activities was \$20.6 million.

Substantial doubt exists as to our ability to continue as a going concern. Our ability to continue as a going concern is subject to material uncertainty and dependent on our ability to obtain additional financing. We expect to incur significant expenses and increasing operating losses for at least the next several years as we continue our clinical development of, seek regulatory approval for, and commercialize, cytisinicline and add personnel necessary to operate as a commercial-stage public company. We expect that our operating losses will fluctuate significantly from quarter to quarter and year to year due to timing of clinical development programs and efforts to achieve regulatory approval. Without additional funds, we may be forced to delay, scale back or eliminate some of our research and development activities or other operations and potentially delay product development in an effort to provide sufficient funds to continue our operations. If any of these events occurs, our ability to achieve our development and commercialization goals would be adversely affected.

Our current resources are insufficient to fund our planned operations for the next 12 months. We will continue to require substantial additional capital to continue our clinical development activities. Accordingly, we will need to raise substantial additional capital from the sale of our securities, debt, partnering arrangements, non-dilutive fundraising or other financing transactions in order to continue to fund our operations and finance the remaining development and commercialization of our product candidate. The amount and timing of our future funding requirements will depend on many factors, including the pace and results of our clinical development efforts. The uncertainty with respect to our operations and the market generally may also make it challenging to raise additional capital on favorable terms, if at all. Failure to raise capital as and when needed, on favorable terms or at all, will have a negative impact on our financial condition and our ability to develop our product candidate. In addition, current macroeconomic conditions have caused turmoil in the banking sector. Failure to raise capital as and when needed, on favorable terms or at all, will have a negative impact on our financial condition and our ability to develop our product candidate.



Our accompanying financial statements have been prepared assuming we will continue to operate as a going concern, which contemplates the realization of assets and liabilities and commitments in the normal course of business. The financial statements do not include any adjustments to the amounts and classification of assets and liabilities that might be necessary should we be unable to continue as a going concern. Such adjustments could be material.

### **Cytisinicline Regulatory Progress**

In the fourth quarter of 2023, we initiated our pre-NDA discussions with the FDA regarding the adequacy of our efficacy and safety information for proceeding with an NDA submission. The FDA expressed support for an NDA submission based on adequate data to assess for efficacy from our two completed randomized and controlled Phase 3 trials. In addition, the FDA advised that long-term exposure data to assess for safety beyond 12 weeks would be needed to adequately assess safety risks given that the FDA views smoking cessation drugs as products for chronic, repeated, and intermittent use as patients may relapse and require subsequent courses of treatment over a lifetime. In the first quarter of 2024, we reached agreement with the FDA that a single, open-label study evaluating the long-term safety effects of cytisinicline will be sufficient to complete the requirement and enable an NDA submission anticipated in the second quarter of 2025.

In the third quarter of 2024, we received Breakthrough Therapy designation from the FDA for cytisinicline for nicotine e-cigarette, or vaping, cessation. Breakthrough Therapy designation is designed to expedite the development and review of drugs that are intended to treat serious conditions when preliminary clinical evidence indicates that the drug may demonstrate substantial improvement over available therapies. It provides product sponsors the ability to receive an FDA cross-disciplinary project management team for interactive communications with senior managers and expert reviewers from FDA to expedite the development of a product.

### ***Ongoing Company-Sponsored Clinical Trial***

#### *Ongoing Open Label ORCA-OL Trial*

In May 2024 we initiated the ORCA-OL open label exposure trial. The trial is designed to provide long-term cytisinicline safety exposure data from subjects who currently smoke or use nicotine e-cigarettes that is required for submission of the cytisinicline New Drug Application, or NDA, and ultimately for potential approval and marketing authorization in the United States.

ORCA-OL is designed to evaluate the long-term exposure of 3 mg cytisinicline treatment dosed three times daily in U.S. adults who want to quit smoking or vaping. In October 2024, we announced that the trial completed enrollment of 479 subjects at 29 clinical trial sites across the United States. We enrolled subjects who had previously participated in the ORCA-program studies. Participants were contacted to enroll in the ORCA-OL study if they were currently using either, or both, combustible cigarettes or nicotine containing e-cigarettes (vaping). Subjects will receive cytisinicline treatment and be monitored for safety events for up to one year. The primary endpoint is frequency of serious adverse events, or SAEs. Other safety and efficacy outcomes will be assessed. The necessary data from the ORCA-OL study is anticipated to be available in the first quarter of 2025 to support an NDA submission in the second quarter of 2025.

Based on agreement with the FDA to follow ICH E1 guidance, results of the ORCA-OL trial are expected to meet the FDA requirement to provide safety data on a minimum of 300 subjects treated with cytisinicline for a cumulative period of six months as part of the anticipated NDA submission. Subsequently, data on at least 100 subjects treated for a total cumulative period of one year will be provided prior to potential product approval. ORCA-OL is being conducted at 29 clinical trial sites across the United States, all of which participated in previous ORCA-program clinical trials.

### **Recent Clinical Developments and Highlights**

#### ***Completed Company-Sponsored Phase 1 Trials***

##### *Completed Phase 1 Safety Trials*

Three Phase 1 clinical studies were conducted in 2022 and 2023 for the NDA: one pharmacokinetics, or PK, study to evaluate for any increased cytisinicline blood levels in subjects who have various levels of renal impairment; another PK study to determine various remaining PK parameters for the 3 mg TID cytisinicline regimen, including the timing of steady state dosing; and a cardiac safety study to evaluate for any effects of cytisinicline on QT interval prolongation. All 3 studies have been completed.

The renal impairment study demonstrated that cytisinicline is excreted unchanged in urine and the pharmacokinetics of cytisinicline are dependent on renal function. Cytisinicline was generally observed to be well tolerated in subjects with varying degrees of renal impairment compared to subjects with normal renal function.

The PK study demonstrated that the 3mg cytisinicline TID dosing regimen reached steady state cytisinicline pharmacokinetics by the second day of TID administration.

The cardiac safety QT/QTc study evaluating therapeutic and suprathreshold high doses of cytisinicline demonstrated that cytisinicline has no clinically relevant effect on QT interval prolongation or cardiac repolarization.

### **Completed Company-Sponsored Phase 2 Trials**

#### *Completed Phase 2 ORCA-1 Trial*

We conducted the Phase 2b ORCA-1 dose selection trial, which was initiated in October 2018 and evaluated 254 smokers in the United States. The trial evaluated both 1.5 mg and 3 mg doses of cytisinicline on the standard declining titration schedule as well as a more simplified TID dosing schedule, both over 25 days. The trial was randomized and blinded to compare the effectiveness of the cytisinicline doses and schedules to respective placebo groups. All subjects were treated for 25 days, provided behavioral support, and followed up for an additional four weeks to assess smoking abstinence.

The primary endpoint in the study was the reduction in daily smoking, a self-reported measure. Three of the four cytisinicline treatment arms demonstrated a statistically significant reduction,  $p < 0.05$ , compared to placebo. Across all treatment arms, over the 25-day treatment period, subjects on cytisinicline experienced a 74-80% median reduction in the number of cigarettes smoked, compared to a 62% reduction in the placebo arms.

The primary endpoint in the study was the reduction in daily smoking, a self-reported measure. Three of the four cytisinicline treatment arms demonstrated a statistically significant improvement,  $p < 0.05$ , compared to placebo. The fourth arm trended to significance ( $p = 0.052$ ). Across all treatment arms, over the 25-day treatment period, subjects on cytisinicline experienced a 74-80% median reduction in the number of cigarettes smoked, compared to a 62% reduction in the placebo arms.

The secondary endpoint of the trial was a 4-week continuous abstinence rate, which is the relevant endpoint for regulatory approval. All cytisinicline treatment arms showed significant improvements in abstinence rates compared to the placebo arms. Notably, the 3 mg TID cytisinicline arm demonstrated a 50% abstinence rate at week 4, compared to 10% for placebo ( $p < 0.0001$ ) and a continuous abstinence rate, weeks 5 through 8, of 30% for cytisinicline compared to 8% for placebo ( $p = 0.005$ ). Smokers in the 3 mg TID arm had an odds ratio, or OR, of 5.04 (95% CI: 1.42, 22.32) for continuous abstinence from week 5 to week 8, compared with placebo, meaning, smokers receiving 3 mg cytisinicline TID were five times more likely to stop smoking compared to smokers receiving placebo.

At week 4, all four cytisinicline arms demonstrated statistically significant ( $p < 0.05$ ) reductions in expired carbon monoxide, or CO, a biochemical measure of smoking activity. Expired CO levels had declined by a median of 71-80% in the cytisinicline treatment arms, compared to only 38% in the placebo arms.

Cytisinicline was well-tolerated with no SAEs reported. The most commonly reported ( $>5\%$ ) adverse events, or AEs, across all cytisinicline treatment arms versus placebo arms were abnormal dreams, insomnia, upper respiratory tract infections, and nausea. In the 3 mg TID treatment arm versus placebo arms, the most common AEs were abnormal dreams, insomnia, and constipation (each 6% vs 2%), upper respiratory tract infections (6% vs 14%), and nausea (6% vs 10%), respectively. Compliance with study treatment was greater than 94% across all arms.

Final study results were published in the scientific journal *Nicotine and Tobacco Research* in April 2021.

#### *Completed Phase 2 ORCA-V1 Clinical Trial*

In June 2022, following NIDA/NIH review of completed regulatory and clinical operational milestones plus acceptance of the Investigational New Drug Application by the FDA, we announced that we were awarded the next grant funding from NIDA in the amount of approximately \$2.5 million. The full grant award of \$2.8 million covered approximately half of the total ORCA-V1 clinical study costs. The Primary Investigators for the grant are our President and Chief Medical Officer, Dr. Cindy Jacobs, and Dr. Nancy Rigotti, Professor of Medicine at Harvard Medical School and Director, Tobacco Research and Treatment Center, Massachusetts General Hospital.

In June 2022, we announced the initiation of the Phase 2 ORCA-V1 clinical trial. In April 2023, we reported positive topline results showing a statistically significant vaping cessation benefit for cytisinicline-treated participants in the ORCA-V1 trial.

ORCA-V1 evaluated 160 adults who used e-cigarettes on a daily basis at five clinical trial locations in the United States. ORCA-V1 participants were randomized to receive 3 mg cytisinicline three times daily or placebo for 12 weeks in combination with standard cessation behavioral support.

The primary endpoint for ORCA-V1 was biochemically verified continuous abstinence from nicotine e-cigarette use, measured during the last 4 weeks of treatment. Subjects who received 12 weeks of cytisinicline treatment had 2.64 times higher odds, or likelihood, to have quit vaping during the last four weeks of treatment compared to subjects who received placebo (p=0.04). The vaping cessation rate during weeks 9 through 12 was 31.8% for cytisinicline compared to 15.1% for placebo. A benefit in favor of cytisinicline was consistently observed across the secondary endpoints. Additionally, a cessation benefit was observed for cytisinicline across clinical trial sites and participant demographics such as age, gender, race, or whether they had smoked cigarettes in the past.

Cytisinicline was well tolerated and no SAEs were reported. Similar rates of AEs were observed between treatment arms (54.7% in the placebo arm vs. 50.9% in the cytisinicline arm). The most commonly reported (>5%) AEs in the placebo arm, in order of frequency, were nausea, COVID-19 infection, headache, anxiety, and upper respiratory tract infection. In the cytisinicline arm, >5% AEs reported, in order of frequency, were sleep disturbances, anxiety, headache, fatigue, and upper respiratory tract infection.

ORCA-V1 trial results were presented at the Society for Research on Nicotine and Tobacco, or SRNT, European Annual Meeting in September 2023, the SRNT U.S. Annual Meeting in March 2024, the Society of General Internal Medicine U.S. Annual Meeting in May 2024 and final study results were published in the Journal of the American Medical Association, or JAMA, Internal Medicine in May 2024.

### ***Completed Company-Sponsored Phase 3 Clinical Trials for Smoking Cessation Indication***

#### *Completed Phase 3 ORCA-2 Trial*

In April 2022, we announced positive topline results for the Phase 3 ORCA-2 clinical trial. ORCA-2 was initiated in October 2020 and evaluated the efficacy and safety of 3 mg cytisinicline dosed three times daily compared to placebo in 810 adult smokers at 17 clinical sites in the United States. ORCA-2 participants were randomized to one of three study arms to determine the smoking cessation efficacy and safety profile of cytisinicline when administered for either 6 or 12 weeks, compared to placebo. All subjects received standard behavioral support and were assigned to one of the following groups:

- Arm A: 12 weeks of placebo
- Arm B: 6 weeks of cytisinicline, followed by 6 weeks of placebo
- Arm C: 12 weeks of cytisinicline

The ORCA-2 study had two independent primary endpoints that evaluated for successful smoking cessation for both 6-week and 12-week durations of cytisinicline treatment, compared to placebo. The primary endpoints for ORCA-2 were biochemically verified continuous smoking cessation measured during the last 4 weeks of each treatment duration. Both the 6- and 12-week cytisinicline treatments demonstrated significantly better quit rates than placebo with ORs of 8.0 and 6.3, respectively.

- Subjects who received 12 weeks of cytisinicline treatment had 6.3 times higher odds, or likelihood, to have quit smoking during the last 4 weeks of treatment compared to subjects who received placebo (p<0.0001). The abstinence rate during weeks 9-12 was 32.6% for cytisinicline compared to 7.0% for placebo.
- Subjects who received 6 weeks of cytisinicline treatment had 8.0 times higher odds, or likelihood, to have quit smoking during the last 4 weeks of treatment compared to subjects who received placebo (p<0.0001). The abstinence rate during weeks 3-6 was 25.3% for cytisinicline compared to 4.4% for placebo.

The secondary endpoints measured continuous smoking abstinence after treatment out to 24 weeks. Both the 6- and 12-week secondary endpoints for continuous abstinence demonstrated significantly better quit rates for cytisinicline treated subjects than placebo. The continuous abstinence rate from week 9 to 24 was 21.1% for the 12-week cytisinicline arm compared to 4.8% for placebo, with an OR of 5.3 (p<0.0001). The continuous abstinence rate from week 3 to 24 was 8.9% for the 6-week cytisinicline arm compared to 2.6% for placebo, with an OR of 3.7 (p=0.0016).

A third secondary endpoint compared the two cytisinicline treatment arms and evaluated for an increased risk in relapse from week 6 to week 24 when subjects were switched to placebo during week 6 to week 12 (Arm B) instead of receiving cytisinicline for another 6

weeks during week 6 to week 12 (Arm C). The analysis showed that there was no increased risk of smoking relapse in subjects who had successfully quit smoking by week 3 through week 6 if they received placebo instead of continuing cytisinicline from week 6 to week 12.

Cytisinicline was well tolerated with no treatment-related SAEs reported. The most commonly reported AEs (occurring greater than 5% overall in the study) for placebo, 6-week cytisinicline, and 12-week cytisinicline, respectively, were:

	Placebo	6-Weeks Cytisinicline	12-Weeks Cytisinicline
<b>Insomnia</b>	4.8%	8.6%	9.6%
<b>Abnormal Dreams</b>	3.0%	8.2%	7.8%
<b>Headaches</b>	8.1%	6.7%	7.8%
<b>Nausea</b>	7.4%	5.9%	5.6%

Additional analyses from the ORCA-2 trial were presented at the SRNT annual meeting in March 2023 and final study results were published in JAMA in July 2023.

#### *Completed Phase 3 ORCA-3 Trial*

In May 2023, we announced positive topline results for our Phase 3 ORCA-3 clinical trial. ORCA-3 was initiated in January 2022 and was a confirmatory Phase 3 trial required for registrational approval of cytisinicline in the United States and had the same design as the Phase 3 ORCA-2 trial. This Phase 3 trial evaluated the efficacy and safety of 3 mg cytisinicline dosed three times daily compared to placebo in 792 adult smokers at 20 clinical sites. ORCA-3 participants were randomized to one of three study arms to evaluate cytisinicline administered for either 6 or 12 weeks, compared to placebo. All subjects received standard behavioral support and were assigned to one of the following groups:

- Arm A: 12 weeks of placebo;
- Arm B: 6 weeks of cytisinicline, followed by 6 weeks of placebo; or
- Arm C: 12 weeks of cytisinicline.

The primary outcome measure of success in the ORCA-3 trial was biochemically verified continuous smoking cessation during the last four weeks of treatment in the 6 and 12-week cytisinicline treatment arms compared with placebo. Each treatment arm was compared independently to the placebo arm. Secondary outcome measures were conducted to assess continued smoking abstinence rates through six months from the start of study treatment.

#### Primary endpoint:

- Subjects who received 12 weeks of cytisinicline treatment had 4.4 times higher odds, or likelihood, to have quit smoking during the last 4 weeks of treatment compared to subjects who received placebo ( $p<0.0001$ ). The smoking cessation rate during weeks 9 through 12 was 30.3% for cytisinicline compared to 9.4% for placebo.
- Subjects who received 6 weeks of cytisinicline treatment had 2.85 times higher odds, or likelihood, to have quit smoking during the last 4 weeks of treatment compared to subjects who received placebo ( $p=0.0008$ ). The smoking cessation rate during weeks 3 through 6 was 14.8% for cytisinicline compared to 6% for placebo.

#### Secondary endpoint:

- The continuous smoking cessation rate from week 9 to week 24 was 20.5% for the 12-week cytisinicline arm compared to 4.2% for placebo, with an odds ratio of 5.79 ( $p<0.0001$ ).

- The continuous smoking cessation rate from week 3 to week 24 was 6.8% for the 6-week cytisinicline arm compared to 1.1% for placebo, with an odds ratio of 6.25 (p=0.0006).

The third secondary endpoint compared the two cytisinicline treatment arms for an increased risk in relapse from week 6 to week 24 when subjects were switched to placebo during week 6 to week 12 (Arm B) instead of receiving cytisinicline for another 6 weeks during week 6 to week 12 (Arm C). The analysis showed that there was no increased risk of smoking relapse in subjects who had successfully quit smoking by week 3 through week 6 and switched to placebo.

ORCA-3 subjects had an average age of 53 years, smoked a median of 20 cigarettes per day at baseline, and had a median smoking history of 36 years with 4 prior quit attempts.

Similar to ORCA-2 findings, cytisinicline was well-tolerated with no treatment-related SAEs reported. The most commonly reported (>5% overall) AEs for placebo, 6-week cytisinicline, and 12-week cytisinicline were:

	Placebo	6-Weeks Cytisinicline	12-Weeks Cytisinicline
<b>Insomnia</b>	7.6%	11.0%	11.9%
<b>Abnormal Dreams</b>	5.7%	9.1%	7.7%
<b>Nausea</b>	7.3%	9.5%	6.9%
<b>Headaches</b>	6.1%	7.6%	8.5%

ORCA-3 trial results were presented at the SRNT annual meeting in March 2024.

## License & Supply Agreements

### *Sopharma License and Supply Agreements*

We are party to a license agreement, or the Sopharma License Agreement, and a supply agreement, or the Sopharma Supply Agreement, with Sopharma. Pursuant to the Sopharma License Agreement, we were granted access to all available manufacturing, efficacy and safety data related to cytisinicline, as well as a granted patent in several European countries related to new oral dosage forms of cytisinicline providing enhanced stability. Additional rights granted under the Sopharma License Agreement include the exclusive use of, and the right to sublicense, certain cytisinicline trademarks in all territories described in the Sopharma License Agreement. Under the Sopharma License Agreement, we agreed to pay a nonrefundable license fee. In addition, we agreed to make certain royalty payments equal to a mid-single digit percentage of all net sales of cytisinicline products in our territory during the term of the Sopharma License Agreement, including those sold by a third party pursuant to any sublicense which may be granted by us. To date, any amounts paid to Sopharma pursuant to the Sopharma License Agreement have been immaterial.

### *Share Purchase Agreement*

On May 14, 2015, we entered into a Share Purchase Agreement with Sopharma to acquire 75% of the outstanding shares of Extab Corporation for \$2.0 million in cash and \$2.0 million in a deferred payment, contingent on regulatory approval of cytisinicline by the FDA or the European Medicines Agency. The fair value of the contingent consideration on the acquisition date was nil. The contingent consideration liability is measured at fair value in our financial statements,

As of September 30, 2024, the fair value of the contingent consideration was estimated to be \$0.7 million (see Note 5 “Fair Value Measurements, Fair Value of Sopharma Share Purchase Agreement Contingent Consideration” in the accompanying consolidated Financial Statements). We recognized a loss of \$0.1 million and \$0.2 million for the three and nine months ended September 30, 2024.

## Research and Development Expenses

Research and development, or R&D, expenses consist primarily of costs for clinical trials, contract manufacturing, personnel costs, milestone payments to third parties, facilities, regulatory activities, non-clinical studies and allocations of other R&D-related costs. External expenses for clinical trials include fees paid to clinical research organizations, clinical trial site costs and patient treatment costs.

We manage our clinical trials through contract research organizations and independent medical investigators at our sites and at hospitals and expect this practice to continue. Due to our ability to utilize resources across several projects, we do not record or maintain information regarding the indirect operating costs incurred for our R&D programs on a program-specific basis. In addition, we believe that allocating costs on the basis of time incurred by our employees does not accurately reflect the actual costs of a project.

We expect our R&D expenses to increase for the foreseeable future as we continue to conduct our ongoing non-clinical studies, initiate new clinical trials and engage in registration-enabling activities. The process of conducting clinical trials and non-clinical studies necessary to obtain regulatory approval is costly and time consuming and we may never succeed in achieving marketing approval for cytisinicline. (See “Item 1A. Risk Factors—Risks Related to the Development of Our Product Candidate Cytisinicline.”)

Successful development of cytisinicline is highly uncertain and may not result in an approved product. We cannot estimate completion dates for development activities or when we might receive material net cash inflows from our R&D projects, if ever. We anticipate we will make determinations as to which markets, and therefore, which regulatory approvals, to pursue and how much funding to direct toward achieving regulatory approval in each market on an ongoing basis in response to our ability to enter into new strategic alliances with respect to each program or potential product candidate, the scientific and clinical success of each future product candidate, and ongoing assessments as to each future product candidate’s commercial potential. We will need to raise additional capital and may seek additional strategic alliances in the future in order to advance our various programs.

Our projects or intended R&D activities may be subject to change from time to time as we evaluate results from completed studies, our R&D priorities and available resources.

### General and Administrative Expenses

General and administrative expenses consist primarily of salaries and related costs for our personnel in executive, finance and accounting, corporate communications and other administrative functions, as well as consulting costs, including market research, business consulting, human resources and intellectual property. Other costs include professional fees for legal and auditing services, insurance and facility costs.

### Results of Operations

For the three and nine months ended September 30, 2024 and 2023

Research and development expenses

Our R&D expenses for our clinical development program for the three and nine months ended September 30, 2024 and 2023 were as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Clinical development programs:				
Cytisinicline	\$ 7,609	\$ 3,581	\$ 15,521	\$ 13,700
<b>Total research and development expenses</b>	<b>\$ 7,609</b>	<b>\$ 3,581</b>	<b>\$ 15,521</b>	<b>\$ 13,700</b>

R&D expenses for the three months ended September 30, 2024 increased to \$7.6 million as compared to \$3.6 million for the three months ended September 30, 2023. For the nine months ended September 30, 2024, R&D expenses increased to \$15.5 million as compared to \$13.7 million for the nine months ended September 30, 2023. The increase in expenses for the three and nine months ended September 30, 2024 as compared to the same periods in 2023 was primarily due to the initiation, in May 2024, and ramp up of enrollment of our ORCA-OL open label safety trial. This increase was partially offset by a reduction in costs associated with our Phase 3 ORCA-3 trial and Phase 2 ORCA-V1 trial as both were completed in the second quarter of 2023.

General and administrative expenses

Our general and administrative expenses for the three and nine months ended September 30, 2024 and 2023 were as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
<b>Total general and administrative expenses</b>	<b>\$ 4,857</b>	<b>\$ 2,991</b>	<b>\$ 11,358</b>	<b>\$ 9,164</b>

General and administrative expenses for the three and nine months ended September 30, 2024 increased to \$4.9 million and \$11.4 million, respectively, from \$3.0 million and \$9.2 million for the three and nine months ended September 30, 2023, respectively. The increase in expenses for the three and nine months ended September 30, 2024 as compared to the same periods in 2023 was primarily due to higher employee expenses, including severance costs, consulting costs, and legal expenses associated with patent activities and general corporate activities.

#### *Interest Income*

Total interest income for the three and nine months ended September 30, 2024 was \$0.7 million and \$1.9 million, respectively, compared to \$0.3 million and \$0.6 million for the three and nine months ended September 30, 2023, respectively. The increase in interest income for the three and nine months ended September 30, 2024 as compared to the same periods in 2023 was primarily due to higher average cash balances throughout 2024 and higher interest rates.

#### *Interest Expense*

Total interest expense for the three and nine months ended September 30, 2024 was \$0.4 million and \$2.0 million, respectively, compared to \$0.8 million and \$2.1 million for the three and nine months ended September 30, 2023, respectively. The decrease in interest expense for the three and nine months ended September 30, 2024 as compared to the same periods in 2023 was due to a lower principal balance on our New Convertible Term Loan, relative to the Convertible Term Loan, that bears only a monthly interest as a result of the debt refinancing under the New Debt Agreement (see "Liquidity and Capital Resources" below).

#### *Change in fair value of contingent consideration*

We determine the fair value of the contingent consideration using a probability based discounted cash flow model whereby we forecast the timing of the cash flow of the related future payment based on cytisinicline's current clinical development phase and the remaining requirements for regulatory approval. Adjustments to the fair value of the contingent liabilities, other than payments, are recorded as a gain or loss in the Consolidated Statements of Loss and Comprehensive Loss (see Note 6 "Fair Value Measurements, Fair Value of Sopharma Share Purchase Agreement Contingent Consideration" in the accompanying consolidated Financial Statements).

For the three and nine months ended September 30, 2024 we recognized a loss of \$0.1 million and \$0.2 million, respectively.

#### *Loss on extinguishment of 2023 SVB convertible term loan*

The debt refinancing under the New Debt Agreement was recognized as an extinguishment of debt under ASU 470-50. The difference between the reacquisition price and carrying value was recognized on the Consolidated Statement of Loss as a loss on extinguishment of debt.

For each of the three and nine months ended September 30, 2024, we incurred a loss on extinguishment of debt of \$0.3 million.

#### **Liquidity and Capital Resources**

We have incurred an accumulated deficit of \$193.2 million through September 30, 2024 and we expect to incur substantial additional losses in the future as we operate our business and continue or expand our regulatory, manufacturing, pre-commercial and other R&D activities and other operations. We have not generated any revenue from product sales to date, and we may not generate product sales revenue in the near future, if ever. As of September 30, 2024, we had a cash, cash equivalents and short-term investment balance of \$42.9 million and a positive working capital balance of \$38.8 million. For the nine months ended September 30, 2024, net cash used in operations was \$20.6 million. We have historically financed our operations through equity and debt financings. While we believe that we will be able to settle our commitments and liabilities in the normal course of business as they fall due during the next 12 months, as a development-stage company with no current sources of revenue, we are dependent on our ability to raise funds (through public or private securities offerings, debt financings, government funding or grants, or other sources, which may include licensing, collaborations or other strategic transactions or arrangements) to support the ongoing advancement of our clinical trials and corporate activities. We believe that our existing cash, cash equivalents and short-term investments will be sufficient for us to fund our current operating expenses and capital expenditures into the second half of 2025, including through potential NDA submission to the FDA for cytisinicline.

The financial results have been prepared assuming we will continue to operate as a going concern, which contemplates the realization of assets and liabilities and commitments in the normal course of business.

Substantial doubt exists as to our ability to continue as a going concern. Our ability to continue as a going concern is subject to material uncertainty and dependent on our ability to obtain additional financing. We have historically financed our operations through equity offerings and/or debt financings. There can be no assurance that financing from these or other sources will be available to us in the future. Without additional funds, we may be forced to delay, scale back or eliminate some of our research and development activities or other operations and potentially delay product development in an effort to provide sufficient funds to continue our operations. If any of these events occur, our ability to achieve our development and commercialization goals would be adversely affected.

Our current resources are insufficient to fund our planned operations for the next 12 months. We will continue to require substantial additional capital to continue our clinical development activities. Accordingly, we will need to raise substantial additional capital from the sale of our securities, debt, partnering arrangements, non-dilutive fundraising or other financing transactions in order to continue to fund our operations and finance the remaining development and commercialization of our product candidate. The amount and timing of our future funding requirements will depend on many factors, including the pace and results of our clinical development efforts. The uncertainty with respect to our operations and the market generally may also make it challenging to raise additional capital on favorable terms, if at all. In addition, current macroeconomic conditions have caused turmoil in the banking sector. Failure to raise capital as and when needed, on favorable terms or at all, will have a negative impact on our financial condition and our ability to develop our product candidate.

In addition, we expect to incur significant expenses and increasing operating losses for at least the next several years as we continue our clinical development of, seek regulatory approval for, and commercialize, cytisinicline and add personnel necessary to operate as a commercial-stage public company. We expect that our operating losses will fluctuate significantly from quarter to quarter and year to year due to timing of clinical development programs and efforts to achieve regulatory approval.

The consolidated financial statements do not include any adjustments to the amounts and classification of assets and liabilities that might be necessary should we be unable to continue as a going concern. Such adjustments could be material.

We did not have during the periods presented, and we do not currently have, any commitments or obligations, including contingent obligations, other than the Sopharma Contingent Consideration, arising from arrangements with unconsolidated entities or persons that have or are reasonably likely to have a material current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements or capital resources.

#### *Convertible Debt*

On December 22, 2021, we entered into a \$25.0 million contingent convertible debt agreement, or Original Debt Agreement, with Silicon Valley Bank, or SVB, and SVB Innovation Credit Fund VIII, L.P., or together with SVB, the Lenders. As part of the Original Debt Agreement, the Lenders funded \$15.0 million in the form of convertible indebtedness, or Convertible Debt, at closing. On April 26, 2022, we entered into (i) a loan and security agreement, or Loan Agreement, with SVB for the remaining \$10.0 million remaining in the Original Debt Agreement, pursuant to which SVB provided a commitment to extend term loans having an aggregate original principal amount of up to \$10.0 million, or Term Loans, and (ii) a first amendment to the Original Debt Agreement, or the Amendment, and as amended by the Amendment, the Debt Agreement. The availability of Term Loans under the Loan Agreement expired on April 30, 2023, with no amounts drawn under the facility.

On May 15, 2023, we entered into a contingent convertible debt agreement, or Debt Agreement, with the Lenders, pursuant to which the Lenders provided term loans having an aggregate original principal amount of \$16.6 million, or the Convertible Term Loan. The Convertible Debt under the Original Debt Agreement was refinanced as the Convertible Term Loan pursuant to the Debt Agreement. Our obligations under the Loan Agreement, Original Debt Agreement and Convertible Debt were satisfied in full and the Loan Agreement, Original Debt Agreement and Convertible Debt were terminated in connection with the entrance into the Debt Agreement and Convertible Term Loan.

On July 25, 2024, we entered into a contingent convertible debt agreement, or New Debt Agreement, with SVB, a division of First-Citizens Bank & Trust Company, or FCB, in its capacity as administrative agent and collateral agent, and FCB, as a lender, or Lender, pursuant to which the Lender provided term loans having an aggregate original principal amount of \$10.0 million, with additional term loans of up to \$10.0 million available upon the occurrence of certain events as provided for in the New Debt Agreement and further described below, or New Convertible Term Loan. Our obligations under the New Debt Agreement are secured by substantially all of our assets, other than intellectual property.



The New Debt Agreement refinanced the Debt Agreement. Our obligations under the Debt Agreement and Convertible Term Loan were satisfied in full and the Debt Agreement and Convertible Term Loan were terminated in connection with the entrance into the New Debt Agreement and New Convertible Term Loan.

The New Convertible Term Loan matures on December 1, 2027, which maturity date may be extended to June 1, 2028 upon the occurrence of certain events as provided for in the New Debt Agreement. The first tranche of the New Convertible Term Loan, which was advanced on July 25, 2024, has an aggregate original principal amount of \$10.0 million. The Lender will further make available to us, upon our request: (a) on or prior to October 31, 2025, a second tranche of the New Convertible Term Loan having an aggregate principal amount of \$5.0 million in the event that we receive written notice that the FDA has accepted for filing our NDA with respect to cytisinicline for a smoking cessation indication, or the Additional Term Loan Event I, and (b) on or prior to December 31, 2025, a third tranche of the New Convertible Term Loan having an aggregate principal amount of \$5.0 million, subject to the Lender's sole discretion. Interest is calculated on the outstanding principal amount of the New Convertible Term Loan at a floating rate per annum equal to the greater of (i) 7.0% and (ii) the prime rate minus 1.0%, which interest shall be payable in cash monthly in arrears and shall be payable on the earlier to occur of (x) the first day of the first month following any extension of credit by the Lender for our credit, (y) the date of any prepayment pursuant to the New Debt Agreement, or (z) the maturity date. The New Convertible Term Loan will be "interest-only" until December 31, 2025, subject to extension as provided for in the New Debt Agreement. The "interest-only" period may be extended to June 30, 2026, if (i) prior to December 31, 2025, we have received at least \$40,000,000 in net cash proceeds from the issuance equity interests and (ii) the conditions of Additional Term Loan Event I (as defined in the New Debt Agreement) have been satisfied.

Subject to certain terms and conditions, the conversion feature grants the Lender or, pursuant to an assignment, any designee thereof, or Conversion Right Holders, the right to convert part or all of the outstanding aggregate original principal amount of the New Convertible Term Loan, plus accrued and unpaid interest, into shares of our common stock at a conversion price equal to \$7.00, subject to customary adjustment provisions. The Conversion Right Holders have the further right to convert part or all of the outstanding principal amount of the second and third tranches of the New Convertible Term Loan, plus accrued and unpaid interest, into shares of our common stock at a conversion price equal to the greater of (i) \$4.854, subject to customary adjustment provisions, and (ii) the lower of (a) 150% of the average of the closing sale price of our common stock during the 10 trading days preceding the effective date of such tranche and (b) 150% of the closing sale price of our common stock on the trading day immediately preceding the effective date of such tranche.

The conversion rights may be exercised at each Conversion Right Holder's option any time prior to repayment of the New Convertible Term Loan; provided, however, that the Conversion Right Holders will not be permitted to convert part or all of the outstanding aggregate original principal amount of the New Convertible Term Loan without the agreement of the relevant Conversion Right Holder and us if the sum of the amount of debt to be converted; and the aggregate amount of debt previously converted pursuant to any such voluntary conversion, divided by the aggregate of all debt that is then outstanding or that has been repaid other than by conversion exceeds 50%.

Additionally, the outstanding principal of the New Convertible Term Loan, plus accrued and unpaid interest, will automatically be converted into shares of our common stock at the applicable conversion price on such date if any, when the closing price per share of our common stock has been equal to or greater than (a) in the case of the outstanding aggregate original principal amount of the New Convertible Term Loan, plus accrued and unpaid interest, \$24.00 or, (b) in the case of the outstanding principal amount of the second and third tranches of the New Convertible Term Loan, plus accrued and unpaid interest, three times the applicable conversion price, in each case for the thirty consecutive trading days prior to such date, and the Liquidity Conditions (as defined in the New Debt Agreement) have been satisfied.

The New Convertible Term Loan may be repaid at our election and upon notice to the Agent (as defined in the New Debt Agreement) by paying the Lender an amount equal to (i) a prepayment fee equal to (a) 3.0% of the aggregate outstanding principal balance if such prepayment occurs on or prior to the first anniversary of the New Convertible Term Loan, (b) 2.0% of the aggregate outstanding principal balance if such prepayment occurs after the first anniversary, but on or prior to the second anniversary, of the New Convertible Term Loan or (c) 1.0% of the aggregate outstanding principal balance if such prepayment occurs after the second anniversary of the New Convertible Term Loan and before the maturity date; (ii) 4.0% of the original aggregate principal amount of the New Convertible Term Loan and (iii) all other sums due and payable under the New Convertible Term Loan.

The New Debt Agreement contains customary affirmative and restrictive covenants, including covenants regarding the incurrence of additional indebtedness or liens, investments, transactions with affiliates, delivery of financial statements, payment of taxes, maintenance of insurance, dispositions of property, mergers or acquisitions, among other customary covenants. We are also restricted from paying dividends or making other distributions or payments on our capital stock, subject to limited exceptions. The New Debt Agreement also includes customary representations and warranties, events of default and termination provisions. The Lender may not

engage in any short sales of, or other hedging transactions in, our common stock while any amounts are outstanding under the New Debt Agreement.

In connection with the New Debt Agreement, we entered into a Registration Rights Agreement, or RRA, with the Lender, pursuant to which we are required to register for resale shares of our common stock issuable to the Conversion Right Holders upon the conversion of outstanding debt under the New Debt Agreement. Our obligations under the RRA will terminate with respect to a holder of applicable registrable securities if, as of the date we would be required to provide written notice of such registration, (x) the aggregate number of registrable securities then issued and issuable to such holder and to such holder's affiliates, together with all other shares then held beneficially and/or of record by such holder and its affiliates, does not exceed 7.0% of our then-total shares issued and outstanding (calculated including all such registrable securities and other shares), or (y) we and such holder mutually reasonably agree that all registrable securities then issued and issuable to such holder and its affiliates may then be sold by such holder without the requirement to be in compliance with Rule 144 promulgated under the Securities Act, or Rule 144, and otherwise without restriction or limitation pursuant to Rule 144.

#### *Virtu At-the-Market Sales Agreement*

On December 21, 2021, we entered into an At-the-Market Offering Sales Agreement, or ATM, with Virtu Americas, LLC, as sales agent. The ATM was terminated on February 29, 2024, and no further sales of our common stock will be made pursuant to the ATM.

Since entry into the ATM, through the date of termination of the ATM, we offered and sold an aggregate of 200,000 shares of our common stock. These aggregate sales resulted in gross proceeds to us of approximately \$1.5 million. During the three and nine months ended September 30, 2024, we did not sell any shares of our common stock pursuant to the ATM.

#### *May 2023 Registered Direct Offering*

In May 2023, we entered into a securities purchase agreement with certain purchasers, pursuant to which we sold 3,000,000 shares of common stock at a price of \$5.50 per share in a registered direct offering. The offering of the shares was made pursuant to our shelf registration statement on Form S-3 including the prospectus dated January 5, 2022 contained therein, and the prospectus supplement dated May 25, 2023.

We received approximately \$15.3 million in net proceeds from the registered direct offering after deducting placement agent fees and offering expenses.

#### *February 2024 Registered Direct Offering and Concurrent Private Placement*

In February 2024, we entered into a securities purchase agreement with certain purchasers, pursuant to which we sold 13,086,151 shares of common stock at a price of \$4.585 per share in a registered direct offering. The offering of the shares was made pursuant to our shelf registration statement on Form S-3, including the prospectus dated January 5, 2022 contained therein, and the prospectus supplement dated February 28, 2024.

In a concurrent private placement, we issued unregistered warrants to purchase up to 13,086,151 shares of common stock at an exercise price of \$4.906 per share (provided, however, that the purchaser may elect to exercise the warrants for pre-funded warrants in lieu of shares of common stock at an exercise price of \$4.906, minus \$0.001, the exercise price of each pre-funded warrant). These warrants are immediately exercisable for shares of common stock or pre-funded warrants in lieu thereof, and will expire on the earlier of (i) three and one-half years following the date of issuance and (ii) 30 days following our public disclosure of the acceptance of an NDA for cytidinidine by the FDA in a Day 74 Letter or equivalent correspondence. The shares of common stock issuable upon exercise of the warrants (or pre-funded warrants, as applicable) were subsequently registered pursuant to our registration statement on Form S-3, which was declared effective on May 6, 2024.

The registered direct offering raised total gross proceeds of approximately \$60.0 million, and after deducting approximately \$3.9 million in placement agent fees and offering expenses, we received net proceeds of approximately \$56.1 million.

#### *Jefferies Open Market Sales Agreement*

On September 27, 2024, we entered into an Open Market Sale Agreement, or Sale Agreement, with Jefferies LLC, or Jefferies, as sales agent, to establish an at-the-market offering program through which we may sell shares of our common stock with an aggregate offering price of up to \$50.0 million. During the three and nine months ended September 30, 2024, we did not sell any shares under the Sale Agreement. As of September 30, 2024, we had \$50.0 million available under the Sale Agreement.

## Cash Flows

### *Cash Used in Operating Activities*

For the nine months ended September 30, 2024, net cash used in operating activities was \$20.6 million compared to \$20.1 million for the nine months ended September 30, 2023. The increase in cash used in operations in the 2024 period as compared to the 2023 period was due to higher R&D expenses associated with initiation, in May 2024, and ramp up of enrollment of our ORCA-OL trial and timing of required upfront prepayments by our clinical vendors. This was partially offset by reduced costs associated with our Phase 3 ORCA-3 trial and Phase 2 ORCA-V1 trial as both were completed in the second quarter of 2023.

### *Cash Provided in Financing Activities*

For the nine months ended September 30, 2024, net cash provided by financing activities was \$47.8 million compared to \$15.3 million for the nine months ended September 30, 2023. Net cash provided by financing activities in the nine months ended September 30, 2024 relates to proceeds received from the February 2024 registered direct offering, the New Convertible Term Loan associated with the refinancing transaction, and stock sales under our employee stock purchase plan. This was partially offset by repayment of our Convertible Term Loan associated with the refinancing transaction in July 2024. Net cash provided by financing activities in the nine months ended September 30, 2023, relates to proceeds received from the May 2023 registered direct offering and from warrant exercises.

### *Cash Used in Investing Activities*

For the nine months ended September 30, 2024, net cash used in investing activities increased to \$33.3 million from \$15,000 for the nine months ended September 30, 2023. Net cash used in investing activities in the nine months ended September 30, 2024 was due to transactions involving marketable securities in the normal course of business.

## Commitments and Contingencies

We previously disclosed certain contractual obligations and contingencies and commitments relevant to us within the financial statements and Management's Discussion and Analysis of Results of Operations and Liquidity and Capital Resources in our Annual Report on Form 10-K for the year ended December 31, 2023, as filed with the SEC on March 28, 2024. For more information regarding our current contingencies and commitments, see Note 9 to the financial statements included above.

## Critical Accounting Policies and Estimates

The preparation of financial statements in accordance with U.S. GAAP requires management to make estimates and assumptions that affect reported amounts and related disclosures. We have discussed those estimates that we believe are critical and require the use of complex judgment in their application in our audited financial statements for the year ended December 31, 2023 in our Annual Report on Form 10-K filed with the SEC, on March 28, 2024. Since December 31, 2023, there have been no material changes to our critical accounting policies or the methodologies or assumptions we apply under them.

## New Accounting Standards

See Note 2, "Accounting Policies," of the consolidated financial statements for information related to the adoption of new accounting standards in 2024.

## Item 4. Controls and Procedures

### Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that material information required to be disclosed in our periodic reports filed or submitted under the Securities Exchange Act of 1934, as amended, or the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Our disclosure controls and procedures are also designed to ensure that information required to be disclosed in the reports we file or submit under the Exchange Act are accumulated and communicated to our management, including our principal executive officer and principal financial officer as appropriate, to allow timely decisions regarding required disclosure.

During the quarter ended September 30, 2024, we carried out an evaluation, under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act. Based upon that

evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective, as of the end of the period covered by this report.

**Changes in Internal Control Over Financial Reporting**

We have not made any changes to our internal control over financial reporting (as defined in Rule 13a-15(f) and 15d-15(f) under the Exchange Act) during the quarter ended September 30, 2024 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**Limitations on Effectiveness of Controls**

Our management does not expect that our disclosure controls and procedures or our internal controls will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within our company have been detected.

## PART II. OTHER INFORMATION

### ITEM 1A. RISK FACTORS

*Investing in our common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below, together with all of the other information contained in this Quarterly Report on Form 10-Q and in the other periodic and current reports and other documents we file with the Securities and Exchange Commission, before deciding to invest in our common stock. If any of the following risks materialize, our business, financial condition, results of operation and future prospects will likely be materially and adversely affected. In that event, the market price of our common stock could decline and you could lose all or part of your investment. This list is not exhaustive and the order of presentation does not reflect management's determination of priority or likelihood.*

#### **Risks Related to Our Financial Condition and Capital Requirements**

***Substantial doubt exists as to our ability to continue as a going concern. Our ability to continue as a going concern is subject to material uncertainty and dependent on our success at raising additional capital sufficient to meet our obligations on a timely basis. If we fail to obtain additional financing when needed, we may be unable to complete the development, regulatory approval and commercialization of our product candidate.***

Substantial doubt exists as to our ability to continue as a going concern. Our ability to continue as a going concern is subject to material uncertainty and dependent on our ability to obtain additional financing. There is no assurance that we will obtain financing from other sources. The uncertainty with respect to our operations and the capital markets generally may make it more challenging to raise additional capital on favorable terms, if at all.

In addition, we expect to incur significant expenses and increasing operating losses for at least the next several years as we continue our clinical development of, seek regulatory approval for, and commercialize, cytisinicline and add personnel necessary to operate as a commercial-stage public company. We expect that our operating losses will fluctuate significantly from quarter to quarter and year to year due to timing of clinical development programs, efforts to achieve regulatory approval and preparation for commercialization.

Our current resources are insufficient to fund our planned operations for the next 12 months. We will continue to require substantial additional capital to continue our clinical development activities and expand our regulatory, manufacturing and commercialization activities. Accordingly, we will need to raise substantial additional capital from the sale of our securities, debt, partnering arrangements, non-dilutive fundraising or other financing transactions in order to continue to fund our operations and finance the remaining development and commercialization of our product candidate. The current financing environment in the United States, particularly for biotechnology companies like us, is challenging and we can provide no assurances as to when this will improve. Our business may be impacted by macroeconomic conditions, including inflation, interest rates and market conditions as well as political events, war, terrorism, business interruptions and other geopolitical events and uncertainties beyond our control. These factors may make it challenging to raise additional capital on favorable terms, if at all. A severe or prolonged economic downturn could result in a variety of risks to our business, including in our ability to raise additional capital when needed on acceptable terms, if at all. A weak or declining economy also could strain our suppliers, possibly resulting in supply disruption. In addition, current macroeconomic conditions have caused turmoil in the banking sector. For these reasons, among others, we cannot be certain that additional financing will be available when and as needed or, if available, that it will be available on acceptable terms. If financing is available, it may be on terms that adversely affect the interests of our existing stockholders. If adequate financing is not available, we may need to reduce or eliminate our expenditures for research and development of cytisinicline, and may be required to suspend development of cytisinicline. Our actual capital requirements will depend on numerous factors, including:

- the progress and results of our research and development programs;
- the repayment or conversion of our outstanding debt;
- the time and cost involved in obtaining regulatory approvals for our product candidate;
- our commercialization activities and arrangements;
- the cost of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights with respect to our intellectual property;
- the effect of competing technological and market developments;

- the effect of changes and developments in our existing collaborative, licensing and other relationships;
- the effect of interest rate adjustments, which may impact the cost of our borrowing under our loan facility, which includes an adjustable-rate component; and
- the terms of any new collaborative, licensing, commercialization and other arrangements that we may establish.

We may not be able to secure sufficient financing on acceptable terms, or at all. Without additional funds, we may be forced to delay, scale back or eliminate some of our research and development activities or other operations and potentially delay product development in an effort to provide sufficient funds to continue our operations. If any of these events occur, our ability to achieve our development and commercialization goals would be adversely affected.

***We have incurred substantial debt, which could impair our flexibility and access to capital and adversely affect our financial position, and our business would be materially adversely affected if we are unable to service our debt obligations.***

As of September 30, 2024, the principal amounts due under our debt instruments (including the New Debt Agreement, as further described under the section entitled “Management’s Discussion and Analysis of Results of Operations and Liquidity and Capital Resources”) totaled \$10.0 million.

Servicing our debt requires a significant amount of cash. Our debt is subject to floating interest rates set in relation to the prime rate. Increases in interest rates have made and may continue to make our debt service costs increase. The New Convertible Term Loan matures on December 1, 2027, subject to certain potential extensions. We currently do not generate any cash flow from operations and if we are unable to make interest and/or principal payments when due, we would be in default under the New Debt Agreement. We may be required to raise additional capital through future financings or sales of assets to enable us to make interest payments and/or repay our outstanding indebtedness as it becomes due. There can be no assurance that we will be able to generate cash or raise additional capital. Any debt financing that is available could cause us to incur substantial costs and subject us to covenants that significantly restrict our ability to conduct our business. If we seek to complete additional equity financings, the interests of existing stockholders may be diluted. If we are unable to service our loan, the lender may foreclose on and sell the assets securing such indebtedness to satisfy our payment obligations, which could prevent us from accessing those assets for our business and conducting our business as planned, which could materially harm our financial condition and results of operations.

Our obligations under the New Debt Agreement are secured by substantially all of our assets, other than intellectual property. If we are unable to make payment on our secured debt instruments when due, the lender under such instrument may foreclose on and sell the assets securing such indebtedness to satisfy our payment obligations, which could prevent us from accessing those assets for our business and conducting our business as planned, which could materially harm our financial condition and results of operations. Further, if we are liquidated, the rights of the Lender to repayment would be senior to the rights of the holders of our common stock to receive any proceeds from the liquidation. The Lender could declare a default under the New Debt Agreement upon the occurrence of any event that the Lender interprets as a material adverse change as defined under the New Debt Agreement, thereby requiring us to repay the loan immediately or to attempt to reverse the declaration of default through negotiation or litigation. Any declaration by the Lender of an event of default could significantly harm our business, financial condition, results of operations and prospects and could cause the price of our common stock to decline. If we raise any additional debt financing, the terms of such additional debt could further restrict our operating and financial flexibility.

Further, the New Debt Agreement contains customary affirmative and restrictive covenants, including covenants regarding the incurrence of additional indebtedness or liens, investments, transactions with affiliates, delivery of financial statements, payment of taxes, maintenance of insurance, dispositions of property, mergers or acquisitions, and the requirement we keep substantially all of our cash and investments with SVB, among other customary covenants. We are also restricted from paying dividends or making other distributions or payments on capital stock, subject to limited exceptions. The New Debt Agreement includes customary representations and warranties, events of default and termination provisions.

***Our existing and any future indebtedness may limit our cash resources available to invest in the ongoing needs of our business.***

Our outstanding debt combined with our other financial obligations and contractual commitments could have significant adverse consequences, including:

- reducing cash resources available to fund working capital, capital expenditures, product development efforts and other general corporate purposes;
- increasing our vulnerability to adverse changes in general economic, industry and market conditions;

- subjecting us to restrictive covenants that may reduce our ability to take certain corporate actions or obtain further debt or equity financing;
- limiting our flexibility in planning for, or reacting to, changes in our business and our industry; and
- placing us at a competitive disadvantage compared to our competitors that have less debt or better debt servicing options.

We intend to satisfy our current and future debt service obligations with our existing cash and funds from external sources. Nonetheless, we may not have sufficient funds or may be unable to arrange for additional financing to pay the amounts due under our existing or any future debt facility. Funds from external sources may not be available on acceptable terms, if at all.

***We have incurred losses since inception, have a limited operating history on which to assess our business and anticipate that we will continue to incur losses for the foreseeable future.***

We are a clinical development-stage specialty pharmaceutical company with a limited operating history, are not profitable, have incurred losses in each year since our inception and expect to continue incurring losses for the foreseeable future.

Pharmaceutical product development is a highly speculative undertaking and involves a substantial degree of risk. We have devoted substantially all of our financial resources to developing our cytisinicline product candidate and supporting our operations. To date, we have funded the company primarily through the sale of equity securities and convertible promissory notes.

We expect to continue to incur significant expenses and increasing operating losses for the foreseeable future. We further expect that our expenses will increase substantially if and as we:

- continue the clinical development of cytisinicline;
- advance cytisinicline development into larger, more expensive clinical trials;
- initiate additional non-clinical, clinical, or other trials or studies for cytisinicline;
- establish a sales, marketing, and distribution infrastructure to commercialize any product for which we may obtain marketing approval and market for ourselves;
- seek to attract and retain skilled personnel;
- undertake the manufacturing of cytisinicline or increase volumes manufactured by third parties;
- seek regulatory approvals and reimbursement for cytisinicline;
- make milestone, royalty or other payments under third-party license and/or supply agreements;
- seek to discover, identify, assess, acquire, and/or develop other product candidates;
- seek to establish, maintain, protect, and expand our intellectual property portfolio;
- experience delays in the development of our cytisinicline candidate, including delays in clinical trials;
- encounter safety concerns; or
- require additional studies to support regulatory approval and commercialization.

Further, the net losses we incur may fluctuate significantly from quarter to quarter and year to year, such that a period-to-period comparison of our results of operations may not be a good indication of our future performance.

***We have never generated any revenue from product sales and may never be profitable.***

We have no products approved for commercialization and have never generated any revenue from product sales. Our ability to generate revenue and achieve profitability depends on our ability, alone or with strategic collaborators, to successfully complete the development of, and obtain the regulatory approvals necessary to commercialize cytisinicline. We do not anticipate generating revenue from product sales for the foreseeable future. Our ability to generate future revenue from product sales depends heavily on our success in many areas, including but not limited to:

- completing research and development of cytisinicline;
- obtaining regulatory approvals for cytisinicline;

- manufacturing product and establishing and maintaining supply and manufacturing relationships with third parties that are commercially feasible, satisfy regulatory requirements and meet our supply needs in sufficient quantities to satisfy market demand for cytisinicline, if approved;
- marketing, launching and commercializing any product for which we obtain regulatory approval, either directly or with a collaborator or distributor;
- obtaining reimbursement or pricing for cytisinicline that supports profitability;
- gaining market acceptance of cytisinicline as a treatment option;
- addressing any competing or alternative products, including the potential for generic cytisinicline products;
- protecting and enforcing our intellectual property rights, if any, including patents, trade secrets, and know-how;
- negotiating favorable terms in any collaboration, licensing, commercialization, or other arrangements into which we may enter; and
- attracting, hiring, and retaining qualified personnel.

Even if a product candidate that we develop is approved for commercial sale, we anticipate incurring significant costs associated with commercializing that candidate. Additionally, if we are not able to generate sufficient revenue from the sale of any approved products to cover our operating costs, we may never become profitable. If we obtain regulatory approval to market a product candidate, our future revenue will depend upon the size of any markets in which our product candidate may receive approval, and our ability to achieve sufficient market acceptance, pricing, reimbursement from third-party payors, and adequate market share for our product candidate in those markets.

***Our cash and cash equivalents could be adversely affected if the financial institutions in which we hold our cash and cash equivalents fail.***

We regularly maintain cash balances at third-party financial institutions, including with Silicon Valley Bank, or SVB, both in the United States and internationally, in excess of the FDIC insurance limit and similar regulatory insurance limits outside the United States. Further, if we enter into a credit, loan or other similar facility with a financial institution, certain covenants included in such facility may require as security that we keep a significant portion of our cash with the institution providing such facility. If a depository institution where we maintain deposits fails or is subject to adverse conditions in the financial or credit markets, we may not be able to recover all, if any, of our deposits which could adversely impact our operating liquidity and financial performance.

Under the terms of the New Debt Agreement, we are required to keep substantially all of our cash and investments with SVB. In March 2023, SVB was closed by the California Department of Financial Protection and Innovation, which also appointed the FDIC as receiver. Within days, the FDIC assisted depositors of the bank access funds and we were able to regain full access to our cash and cash equivalents with SVB. In May 2023, First Citizens assumed all of SVB's deposits and loans. While our deposits are backed by the FDIC, that support may not last or be honored in the future and we could be materially impacted.

**Risks Related to the Development of Our Product Candidate Cytisinicline**

***Cytisinicline is currently our sole product candidate and there is no guarantee that we will be able to successfully develop and commercialize cytisinicline.***

We are currently dependent on the potential development of a single product candidate, cytisinicline. We are still developing cytisinicline and it cannot be marketed or sold in the United States or in foreign markets until regulatory approval has been obtained from the FDA or applicable foreign regulatory agencies. The process of obtaining regulatory approval is expensive and time consuming. The FDA and foreign regulatory authorities may never approve cytisinicline for sale and marketing, and even if cytisinicline is ultimately approved, regulatory approval may be delayed or limited in the United States or in other jurisdictions. Even if we are authorized to sell and market cytisinicline in one or more markets, there can be no assurance that we will be able to successfully market cytisinicline or that cytisinicline will achieve market acceptance sufficient to generate profits. If we are unable to successfully develop and commercialize cytisinicline due to failure to obtain regulatory approval for cytisinicline, to successfully market cytisinicline, to generate profits from the sale of cytisinicline, or due to other risk factors outlined in this report, it would have material adverse effects on our business, financial condition.



***We are dependent upon a single company for the manufacture and supply of cytisinicline.***

Our single product candidate, cytisinicline, has been in-licensed from a third party, Sopharma, a Bulgarian third-party supplier. Pursuant to a supply agreement with Sopharma, Sopharma is currently the exclusive supplier of cytisinicline and cytisinicline active pharmaceutical ingredients (API). We plan to engage other third parties for our manufacturing process, including, if cytisinicline is approved, to manufacture cytisinicline on a commercial scale, with tableting, blistering and packaging. Our current supply agreement with Sopharma expires on July 28, 2037, unless extended by agreement between us and Sopharma.

Sopharma currently manufactures all of its cytisinicline API in its facilities in Bulgaria. The conflict in Ukraine, including the possibility of expanded regional or global conflict and related economic sanctions, may have negative impacts on Sopharma's business, which could cause them to reduce or terminate investments in the cytisinicline program. If the supply agreement with Sopharma is terminated or if Sopharma is otherwise unable to meet its obligations under the supply agreement, we will need to secure alternative supply and manufacturing capabilities for cytisinicline and/or cytisinicline API, which we may not be able to do on commercially viable terms or at all and would likely delay development, regulatory approval and commercialization.

***The development of our product candidate is dependent upon securing sufficient quantities of cytisinicline from trees and other plants, which grow outside of the United States in a limited number of locations.***

The therapeutic component of our product candidate, cytisinicline, is derived from the seeds of trees and shrubs from the Faboideae subfamily of plant species, which grow in the mountains of Southern Europe and other limited locations around the world. We have and will continue to pursue alternative sources for cytisinicline, including synthetic routes, however, all of the cytisinicline sourced to date for our product candidate has been from natural sources and there is no guarantee that any potential synthetic route developed will be commercially viable. We currently secure cytisinicline exclusively from Sopharma. There can be no assurances that trees and shrubs from the Faboideae subfamily of plant species will continue to grow in sufficient quantities around the world to meet our forecasts or commercial supply requirements or that the countries from which we can secure them will continue to allow the exportation of cytisinicline.

***We plan to submit an NDA to the FDA for approval of cytisinicline as an aid in treating nicotine dependence for smoking cessation, based largely on data from our completed Phase 3 ORCA-2 and ORCA-3 clinical trials and the ongoing ORCA-OL trial; however, there can be no assurance that the data from our clinical trials will ultimately support an NDA filing or that the FDA will grant marketing approval of cytisinicline without additional clinical or nonclinical studies, or at all.***

Drug product candidates must demonstrate substantial evidence of effectiveness, as well as safety to be approved in the United States. The FDA has interpreted that statutory standard as generally requiring at least two adequate and well-controlled clinical trials, each convincing on its own, to establish effectiveness and a safety profile. Under certain circumstances the FDA will determine that data from one adequate and well-controlled clinical trial together with confirmatory evidence obtained prior to or after such clinical trial are sufficient to constitute substantial evidence of effectiveness.

Cytisinicline is a naturally occurring, plant-based alkaloid. Cytisinicline is structurally similar to nicotine and has a well-defined, dual-acting mechanism of action that is both agonistic and antagonistic. It is believed to aid in smoking cessation and the treatment of nicotine addiction by interacting with nicotine receptors in the brain, reducing the severity of nicotine withdrawal symptoms through agonistic effects on nicotine receptors and reducing the reward and satisfaction associated with nicotine through antagonistic properties. Cytisinicline has been studied in two company-sponsored randomized, multicenter, double-blind, placebo-controlled Phase 3 clinical studies that randomized a total of 1,602 adult smokers in 37 study sites across the United States.

The FDA has advised us that long-term exposure data to assess for safety beyond 12 weeks will be needed to adequately assess safety risks given that the FDA views smoking cessation drugs as products for chronic, repeated, and intermittent use as patients may relapse and require subsequent courses of treatment over a lifetime. In the first quarter of 2024, we reached agreement with the FDA that a single, open-label study, which we refer to as ORCA-OL, evaluating the long-term safety effects of cytisinicline will be sufficient to complete the requirement and enable an NDA submission. We initiated the ORCA-OL trial in May 2024 and in October 2024 we announced the completion of enrollment of 479 subjects. However, regardless of these discussions and the results of the ORCA-OL open label study, the FDA may determine that:

- the existing data, and the data from the ORCA-OL open label study, may not be sufficient and the FDA may require additional clinical and/or nonclinical studies prior to filing an NDA and approval of cytisinicline for treating nicotine dependence for smoking cessation in adults;
- the population studied in the clinical program may not be sufficiently broad or representative to assure safety in the full population for which we seek approval;

- the product candidate's risk-benefit ratios for the proposed indication may not be acceptable;
- the data collected from clinical trials of our product candidate may not be sufficient to support the submission of an application for marketing authorization; and
- third-parties' manufacturing processes or facilities with which we contract for clinical and commercial supplies may not meet the standards required for approval.

Failure to obtain regulatory approval to market our product candidate would significantly harm our business, results of operations, and prospects.

***Results of earlier clinical trials of cytisinicline are not necessarily predictive of future results, and any advances of cytisinicline into clinical trials may not have favorable results or receive regulatory approval.***

Even if our clinical trials are completed as planned, we cannot be certain that their results will be consistent with the results of the earlier clinical trials of cytisinicline. Positive results in non-clinical testing and past clinical trials with respect to the safety and efficacy of cytisinicline do not ensure that results from subsequent clinical trials will also be positive, and we cannot be sure that the results of subsequent clinical trials will replicate the results of prior clinical trials and non-clinical testing. Any such failure may cause us to abandon cytisinicline, which would negatively affect our ability to generate any product revenues.

***Clinical trials, including the ongoing ORCA-OL trial, are costly, time consuming and inherently risky, and we may fail to demonstrate safety and efficacy to the satisfaction of applicable regulatory authorities. Any advances of cytisinicline into clinical trials may not have favorable results or receive regulatory approval.***

Clinical development is expensive, time consuming and involves significant risk. We cannot guarantee that any clinical trial, including the ongoing ORCA-OL trial, will be conducted as planned or completed on schedule, if at all. Events that may prevent successful or timely completion of the ongoing ORCA-OL trial, but are not limited to:

- subjects terminating enrollment in the ORCA-OL trial;
- failure by clinical sites, CROs or other third parties to adhere to clinical trial requirements;
- failure by clinical sites, CROs or other third parties to perform in accordance with the good clinical practices requirements of the FDA or applicable foreign regulatory guidelines;
- disruptions to our supply chain for the cytisinicline required for the ORCA-OL trial;
- the occurrence of previously unknown or unobserved adverse events or tolerability issues associated with our product candidate, including those significant enough to stop the trial or for the FDA or other regulatory agencies to put the ORCA-OL trial on hold;
- the cost of the ORCA-OL trial;
- negative or inconclusive results from the ORCA-OL trial, which may result in us deciding, or regulators requiring us, to conduct further additional clinical trials or abandon development programs in ongoing or other planned indications for cytisinicline;
- discovery of impurities in our cytisinicline drug product, such as nitrosamines, above the regulators' prescribed thresholds; and
- delays in the manufacture or packaging of sufficient quantities of cytisinicline for use the ORCA-OL trial.

Any inability to successfully complete clinical development and obtain regulatory approval for cytisinicline could result in additional costs to us or impair our ability to generate revenue. In addition, if we make manufacturing or formulation changes to cytisinicline, we may need to conduct additional non-clinical trials, or the results obtained from such new formulation may not be consistent with previous results obtained. Clinical trial delays could result in delayed regulatory approval and potential commercialization, as well as shorten any periods during which our products have patent protection and may allow competitors to develop and bring products to market before we do, which could impair our ability to successfully commercialize cytisinicline and may harm our business and results of operations.

Further, even if the ORCA-OL trial is completed as planned, we cannot be certain that its long-term safety results will be consistent with the results of the earlier clinical trials of cytisinicline or support an NDA filing. Positive results in non-clinical testing and past clinical trials with respect to the adequate safety and efficacy of cytisinicline do not ensure that results from subsequent clinical trials

will also be positive or adequate, and we cannot be sure that the results of subsequent clinical trials will replicate the results of prior clinical trials and non-clinical testing. Any such failure may cause us to abandon cytisinicline, which would negatively affect our ability to conduct our business and generate any product revenues and result in a loss of company value.

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

Undesirable side effects caused by cytisinicline could cause us or regulatory authorities to interrupt, delay, or terminate clinical trials. Even if approved, these could result in a restrictive label, a shelf life that is not commercially viable or delay regulatory approval by the FDA or comparable foreign authorities.

If contaminants, or impurities such as nitrosamines, are discovered in quantities above regulators' thresholds within our supply of cytisinicline, we may potentially delay product development and approval or have a material adverse impact on our business. Failure to reach agreement with the FDA on acceptable intake levels for impurities, such as nitrosamines, or exceeding agreed upon levels could delay or prevent regulatory approval.

Additionally, even if cytisinicline receives marketing approval and we or others later identify undesirable side effects caused by cytisinicline, potentially significant negative consequences could result, including but not limited to:

- regulatory authorities may withdraw approvals of cytisinicline;
- regulatory authorities may require additional warnings on the cytisinicline label;
- we may be required to create a Risk Evaluation and Mitigation Strategy, or REMS, plan, which could include a medication guide outlining the risks of such side effects for distribution to patients, a communication plan for healthcare providers, and/or other elements to assure safe use;
- we could be subject to product liability claims for harm caused to patients; and
- our reputation may suffer.

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

***Our product development program may not uncover all possible adverse events that patients who take cytisinicline or our other product candidates may experience. The number of subjects exposed to cytisinicline or our other product candidates and the average exposure time in the clinical development program may be inadequate to detect rare adverse events, or chance findings, that may only be detected once the product is administered to more patients and for greater periods of time.***

Clinical trials by their nature utilize a sample of the potential patient population. We cannot be fully assured that any and all rare and severe side effects of cytisinicline will be uncovered. Such rare and severe side effects may only be uncovered with a significantly larger number of patients exposed to cytisinicline or over a significantly longer period of time. If such safety problems occur or are identified after cytisinicline reaches the market in the United States, or if such safety problems occur or are identified in foreign markets where cytisinicline is currently marketed, the FDA may require that we amend the labeling of cytisinicline or recall it, or may even withdraw approval for cytisinicline.

***If the use or misuse of cytisinicline harms patients, or is perceived to harm patients even when such harm is unrelated to cytisinicline, our regulatory approvals, if any, could be revoked or otherwise negatively impacted and we could be subject to costly and damaging product liability claims. If we are unable to obtain adequate insurance or are required to pay for liabilities resulting from a claim excluded from, or beyond the limits of, our insurance coverage, a material liability claim could adversely affect our financial condition.***

The use or misuse of cytisinicline in clinical trials and the sale of cytisinicline if marketing approval is obtained, exposes us to the risk of potential product liability claims. Product liability claims might be brought against us by consumers, healthcare providers, pharmaceutical companies or others selling or otherwise coming into contact with our product. There is a risk that cytisinicline may induce adverse events. If we cannot successfully defend against product liability claims, we could incur substantial liability and costs.

In addition, during the course of treatment, patients may suffer adverse events for reasons that may be related to cytisinicline. Such events could subject us to costly litigation, require us to pay substantial amounts of money to injured patients, delay, negatively impact or end our opportunity to receive or maintain regulatory approval to market cytisinicline, if any, or require us to suspend or abandon our commercialization efforts. Even in a circumstance in which an adverse event is unrelated to cytisinicline, an investigation into such circumstance may be time-consuming or inconclusive. Such investigations may delay our regulatory approval process or impact and limit the type of regulatory approvals cytisinicline receives or maintains. As a result, a product liability claim, even if successfully defended, could have a material adverse effect on our business, financial condition or results of operations and reputation.

If we obtain marketing approval for cytisinicline, we will need to expand our insurance coverage to include the sale of commercial products. We cannot know if we will be able to continue to obtain product liability coverage and obtain expanded coverage if we require it in sufficient amounts to protect us against losses due to liability, on acceptable terms, or at all. We may not have sufficient resources to pay for any liabilities resulting from a claim excluded from, or beyond the limits of, our insurance coverage.

Where we have provided indemnities in favor of third parties under our agreements with them, there is a risk that these third parties could incur liability and bring a claim under such indemnities. An individual may also bring a product liability claim against us alleging that cytisinicline causes, or is claimed to have caused, an injury or is found to be unsuitable for consumer use. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability, and a breach of warranties. Claims could also be asserted under state consumer protection acts.

Any product liability claim brought against us, with or without merit, could result in:

- withdrawal of clinical trial volunteers, investigators, patients or trial sites or limitations on approved indications;
- an inability to commercialize, or if commercialized, a decreased demand for, cytisinicline;
- if commercialized, product recalls, withdrawals of labeling, marketing or promotional restrictions or the need for product modification;
- initiation of investigations by regulators;
- loss of revenue, if any;
- substantial costs of litigation, including monetary awards to patients or other claimants;
- liabilities that substantially exceed our product liability insurance, which we would then be required to pay ourselves;
- increased product liability insurance rates, or inability to maintain insurance coverage in the future on acceptable terms, if at all;
- diversion of management's attention from our business; and
- damage to our reputation and the reputation of our products and our technology.

Product liability claims may subject us to the foregoing and other risks, which could have a material adverse effect on our business, financial condition or results of operations.

***Our business may be negatively affected by weather conditions, natural disasters, and the availability of natural resources, as well as by climate change.***

In recent years, extreme weather events and changing weather patterns such as storms, flooding, drought, and temperature changes appear to have become more common. The production of cytisinicline from the Faboideae subfamily of plant species depends on the availability of natural resources, including sufficient rainfall. Sopharma, our supplier of cytisinicline, could be adversely affected if it experiences a shortage of fresh water due to droughts or if it experiences other adverse weather conditions in the locations where cytisinicline is sourced. The long-term effects of climate change on general economic conditions and the pharmaceutical industry in particular are unclear and may heighten or intensify existing risk of natural disasters. As a result of such events, we could experience cytisinicline shortages, which could have a material adverse effect on our business, financial condition and results of operations.

In addition, the manufacturing and other operations of Sopharma are located near earthquake fault lines in Sofia, Bulgaria. In the event of a major earthquake, we could experience business interruptions from the disruption of our cytisinicline supplies, which could have a material adverse effect on our business, financial condition and results of operations.

***We conduct clinical trials internationally, which may trigger additional risks.***

Conducting clinical trials in Europe or other countries outside of the United States has additional regulatory requirements that we have to meet in connection with our manufacturing, distribution, use of data and other matters. Failure to meet such regulatory requirements could delay our clinical trials, the approval, if any, of cytisinicline by the FDA or other regulatory authorities, or the commercialization of cytisinicline, or result in higher costs or deprive us of potential product revenues. For example, we have recently conducted clinical trials in Spain and Portugal and are subject to the local regulatory requirements of such jurisdictions.

***We may use our financial and human resources to pursue a particular research program or product candidate and fail to capitalize on programs or product candidates that may be more profitable or for which there is a greater likelihood of success.***

Because we have limited financial and human resources, we may forego or delay pursuit of opportunities with some programs or product candidates or for other indications that later prove to have greater commercial potential. Our resource allocation decisions may cause us to fail to capitalize on viable commercial products or more profitable market opportunities. Our spending on current and future research and development programs and future product candidates for specific indications may not yield any commercially viable products. We may also enter into additional strategic collaboration agreements to develop and commercialize some of our programs and potential product candidates in indications with potentially large commercial markets. 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 strategic collaborations, licensing or other royalty arrangements in cases in which it would have been more advantageous for us to retain sole development and commercialization rights to such product candidate, or we may allocate internal resources to a product candidate in a therapeutic area in which it would have been more advantageous to enter into a partnering arrangement.

#### **Risks Related to Regulatory Approval of Cytisinicline and Other Legal Compliance Matters**

***If we do not obtain the necessary regulatory approvals in the United States and/or other countries, we will not be able to sell cytisinicline.***

We will need approval from the FDA to commercialize cytisinicline in the United States and approvals from similar regulatory authorities in foreign jurisdictions to commercialize cytisinicline in those jurisdictions. In order to obtain FDA approval of cytisinicline, we must submit an NDA to the FDA, demonstrating that cytisinicline is safe, pure and potent, and effective for its intended use. This demonstration requires significant research including completion of clinical trials. Satisfaction of the FDA's regulatory requirements typically takes many years, depending upon the type, complexity and novelty of the product candidate and requires substantial resources for research, development and testing. We cannot predict whether our clinical trials will demonstrate the safety and efficacy of cytisinicline or if the results of any clinical trials will be sufficient to advance to the next phase of development or for approval from the FDA. We also cannot predict whether our research and clinical approaches will result in data that the FDA considers safe and effective for the proposed indications of cytisinicline. The FDA has substantial discretion in the product approval process. The approval process may be delayed by changes in government regulation, future legislation or administrative action or changes in FDA policy that occur prior to or during our regulatory review. Even if we comply with all FDA requests, the FDA may ultimately reject one or more of our applications. We may never obtain regulatory approval for cytisinicline. Failure to obtain approval from the FDA or comparable regulatory authorities in foreign jurisdictions to commercialize cytisinicline will leave us without saleable products and therefore without any source of revenues. In addition, the FDA may require us to conduct additional clinical testing or to perform post-marketing studies, as a condition to granting marketing approval of a product or permit continued marketing, if previously approved. If conditional marketing approval is obtained, the results generated after approval could result in loss of marketing approval, changes in product labeling, and/or new or increased concerns about the side effects or efficacy of a product. The FDA has significant post-market authority, including the explicit authority to require post-market studies and clinical trials, labeling changes based on new safety information and compliance with FDA-approved risk evaluation and mitigation strategies. The FDA's exercise of its authority has in some cases resulted, and in the future could result, in delays or increased costs during product development, clinical trials and regulatory review, increased costs to comply with additional post-approval regulatory requirements and potential restrictions on sales of approved products. In foreign jurisdictions, the regulatory approval processes generally include the same or similar risks as those associated with the FDA approval procedures described above. We cannot be certain that we will receive the approvals necessary to commercialize cytisinicline for sale either within or outside the United States.

Further, in June 2024, the U.S. Supreme Court reversed its longstanding approach under the Chevron doctrine, which provided for judicial deference to regulatory agencies, including the FDA. As a result of this decision, we cannot be sure whether there will be increased challenges to existing agency regulations or how lower courts will apply the decision in the context of other regulatory schemes without more specific guidance from the U.S. Supreme Court. For example, this decision may result in more companies bringing lawsuits against the FDA to challenge longstanding decisions and policies of the FDA, which could undermine the FDA's authority, lead to uncertainties in the industry, and disrupt the FDA's normal operations, which could impact the timely review of any regulatory filings or applications we submit to the FDA.

***A Breakthrough Therapy designation by the FDA may not lead to a faster development or regulatory review or approval process and it does not increase the likelihood that our product candidates will receive marketing approval.***

We may seek a Breakthrough Therapy designation for our product candidates if the clinical data support such a designation for one or more product candidates. For example, the FDA has granted Breakthrough Therapy designation for cytisinicline for nicotine e-cigarette, or vaping, cessation. A breakthrough therapy is defined as a drug or biologic that is intended, alone or in combination with one or more other drugs or biologics, to treat a serious or life-threatening disease or condition and preliminary clinical evidence

indicates that the drug or biologic may demonstrate substantial improvement over existing therapies on one or more clinically significant endpoints, such as substantial treatment effects observed early in clinical development. For product candidates that have been designated as breakthrough therapies, interaction and communication between the FDA and the sponsor of the trial can help to identify the most efficient path for clinical development while minimizing the number of patients placed in ineffective control regimens.

The receipt of a Breakthrough Therapy designation for a product candidate may not result in a faster development process, review or approval compared to drugs considered for approval under non-expedited FDA review procedures and does not assure ultimate approval by the FDA. In addition, when a product candidate qualifies as a breakthrough therapy, the FDA may later decide that the product no longer meets the conditions for qualification.

***Even if we obtain regulatory approval for cytisinicline, we will remain subject to ongoing regulatory requirements in connection with the sale and distribution of cytisinicline.***

Even if cytisinicline is approved by the FDA or comparable foreign regulatory authorities, we will be subject to ongoing regulatory requirements with respect to manufacturing, labeling, packaging, storage, advertising, promotion, sampling, record-keeping, conduct of post-marketing clinical trials, and submission of safety, efficacy and other post-approval information, including both federal and state requirements in the United States and the requirements of comparable foreign regulatory authorities. Compliance with such regulatory requirements will likely be costly and the failure to comply would likely result in penalties, up to and including, the loss of such approvals from the FDA or comparable foreign regulatory authorities.

Manufacturers and manufacturers' facilities are required to continuously comply with FDA and comparable foreign regulatory authority requirements, including ensuring that quality control and manufacturing procedures conform to current cGMP regulations and corresponding foreign regulatory manufacturing requirements. As such, we, Sopharma and other contract manufacturers, if any, will be subject to continual review and inspections to assess compliance with cGMP and adherence to commitments made in any NDA or marketing authorization application. Sopharma currently does not have FDA approval of its facilities in Bulgaria. If Sopharma or our other contract manufacturers fail to maintain cGMP compliance or fail inspections with the FDA and other regulators, then our business could severely be harmed.

***Ongoing post-approval monitoring and clinical trial obligations may be costly to us and the failure to meet such obligations may result in the withdrawal of such approvals.***

Any regulatory approvals that we receive for cytisinicline may be subject to limitations on the approved indicated uses for which cytisinicline may be marketed or to the conditions of approval, or contain requirements for potentially costly post-marketing testing, including Phase 4 clinical trials, and surveillance to monitor the safety and efficacy of cytisinicline. We will be required to report adverse reactions and production problems, if any, to the FDA and comparable foreign regulatory authorities. Any new legislation addressing product safety issues could result in delays in product development or commercialization, or increased costs to assure compliance. If our original marketing approval for cytisinicline was obtained through an accelerated approval pathway, we could be required to conduct a successful post-marketing clinical trial in order to confirm the clinical benefit for our products. An unsuccessful post-marketing clinical trial or failure to complete such a trial could result in the withdrawal of marketing approval.

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

- issue warning letters;
- impose civil or criminal penalties;
- suspend or withdraw regulatory approval;
- suspend any of our ongoing clinical trials;
- refuse to approve pending applications or supplements to approved applications submitted by us;
- impose restrictions on our operations, including closing our contract manufacturers' facilities; or
- require a product recall.

Any government investigation of alleged violations of law would be expected to require us to expend significant time and resources in response and could generate adverse publicity. Any failure to comply with ongoing regulatory requirements may significantly and adversely affect our ability to develop and commercialize our products and the value of us and our operating results would be adversely affected.

***We may be subject, directly or indirectly, to federal and state healthcare fraud and abuse laws, false claims laws, and health information privacy and security laws. If we are unable to comply, or have not fully complied, with such laws, we could face substantial penalties.***

If we obtain FDA approval for cytisinicline and begin commercializing it in the United States, our operations may be subject to various federal and state fraud and abuse laws, including, without limitation, the federal Anti-Kickback Statute, the federal False Claims Act, and physician sunshine laws and regulations. These laws may impact, among other things, our proposed sales, marketing, and education programs. In addition, we may be subject to patient privacy regulation by both the federal government and the states in which we conduct our business. The laws that may affect our ability to operate include:

- the federal Anti-Kickback Statute, which prohibits, among other things, persons from knowingly and willfully soliciting, receiving, offering or paying remuneration, directly or indirectly, to induce, or in return for, the purchase or recommendation of an item or service reimbursable under a federal healthcare program, such as the Medicare and Medicaid programs;
- federal civil and criminal false claims laws and civil monetary penalty laws, which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid, or other third-party payors that are false or fraudulent;
- the federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, which created new federal criminal statutes that prohibit executing a scheme to defraud any healthcare benefit program and making false statements relating to healthcare matters;
- HIPAA, as amended by the Health Information Technology and Clinical Health Act, and its implementing regulations, which imposes specified requirements relating to the privacy, security, and transmission of individually identifiable health information;
- the federal physician sunshine requirements under the Healthcare Reform Law requires manufacturers of products, devices, biologics, and medical supplies to report annually to the U.S. Department of Health and Human Services information related to payments and other transfers of value to physicians, other healthcare providers, and teaching hospitals, and ownership and investment interests held by physicians and other healthcare providers and their immediate family members and applicable group purchasing organizations; and
- state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws that may apply to items or services reimbursed by any third-party payor, including governmental and private payors, to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government, or otherwise restrict payments that may be made to healthcare providers and other potential referral sources; state laws that require product manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers or marketing expenditures, and state laws governing the privacy and security of health information in specified circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts.

Because of the breadth of these laws and the narrowness of the statutory exceptions and safe harbors available, it is possible that some of our business activities could be subject to challenge under one or more of such laws. In addition, recent healthcare reform legislation has strengthened these laws. For example, the Healthcare Reform Law, among other things, amends the intent requirement of the federal anti-kickback and criminal healthcare fraud statutes. A person or entity no longer needs to have actual knowledge of this statute or specific intent to violate it. Moreover, the Healthcare Reform Law provides that the government may assert that a claim including items or services resulting from a violation of the federal anti-kickback statute constitutes a false or fraudulent claim for purposes of the False Claims Act.

If our operations are found to be in violation of any of the laws described above or any other governmental regulations that apply to us, we may be subject to penalties, including civil and criminal penalties, damages, fines, exclusion from participation in government healthcare programs, such as Medicare and Medicaid, imprisonment, and the curtailment or restructuring of our operations, any of which could adversely affect our ability to operate our business and its results of operations.

***Healthcare legislative and executive reform measures may have a material adverse effect on our business, financial condition or results of operations.***

In the United States, there have been and continue to be a number of legislative initiatives to contain healthcare costs. For example, in March 2010, the Healthcare Reform Law was passed, which substantially changed the way healthcare is financed by both governmental and private insurers, and significantly impacts the U.S. pharmaceutical industry. The Healthcare Reform Law, among other things, addresses a new methodology by which rebates owed by manufacturers under the Medicaid Drug Rebate Program are calculated for products that are inhaled, infused, instilled, implanted, or injected, increases the minimum Medicaid rebates owed by manufacturers under the Medicaid Drug Rebate Program and extends the rebate program to individuals enrolled in Medicaid managed care organizations, establishes annual fees and taxes on manufacturers of specified branded prescription products, and promotes a new Medicare Part D coverage gap discount program.

There have also been multiple recent U.S. congressional inquiries and proposed and adopted federal and state legislation designed to, among other things, bring more transparency to drug pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for drugs and biologics. In addition, Congress and multiple presidential administrations have indicated that they will continue to seek new legislative and/or administrative measures to control drug costs. These initiatives recently culminated in the enactment of the Inflation Reduction Act, or the IRA, in August 2022, which will, among other things, allow HHS to negotiate the selling price of certain drugs and biologics that CMS reimburses under Medicare Part B and Part D, although only high-expenditure single-source drugs that have been approved for at least 7 years (11 years for biologics) can be selected by CMS for negotiation, with the negotiated price taking effect two years after the selection year. The negotiated prices, which will first become effective in 2026, will be capped at a statutory ceiling price beginning in October 2023, penalize drug manufacturers that increase prices of Medicare Part B and Part D drugs at a rate greater than the rate of inflation. The IRA permits the Secretary of HHS to implement many of these provisions through guidance, as opposed to regulation, for the initial years. Manufacturers that fail to comply with the IRA may be subject to various penalties, including civil monetary penalties. The IRA also extends enhanced subsidies for individuals purchasing health insurance coverage in U.S. Affordable Care Act, or ACA, marketplaces through plan year 2025. These provisions will take effect progressively starting in 2023, although they may be subject to legal challenges. We anticipate that additional state and federal healthcare measures could be adopted in the future, any of which could limit the amounts that federal and state governments will pay for healthcare products and services, which could result in reduced demand or lower pricing for cytosincline, or additional pricing pressures. Currently, ACA and other federal laws and rules require most health insurance plans in the U.S. to cover some level of tobacco cessation treatments, including smoking cessation counseling and medications. If these provisions are repealed, in whole or in part, our business, financial condition, or results of operations could be negatively affected.

***Our ability to obtain services, reimbursement or funding may be impacted by possible reductions in federal spending in the United States as well as globally.***

U.S. federal government agencies currently face potentially significant spending reductions. Under the Budget Control Act of 2011, the failure of Congress to enact deficit reduction measures of at least \$1.2 trillion for the years 2013 through 2021 triggered automatic cuts to most federal programs. These cuts include aggregate reductions to Medicare payments to providers of up to two percent per fiscal year, which went into effect beginning on April 1, 2013 and will stay in effect through 2025 unless additional Congressional action is taken. The American Taxpayer Relief Act of 2012, which was enacted on January 1, 2013, among other things, reduced Medicare payments to several providers, including hospitals and imaging centers. The full impact on our business of these automatic cuts is uncertain.

If government spending is reduced, anticipated budgetary shortfalls may also impact the ability of relevant agencies, such as the FDA or the National Institutes of Health to continue to function at current levels. Amounts allocated to federal grants and contracts may be reduced or eliminated. These reductions may also impact the ability of relevant agencies to timely review and approve drug research and development, manufacturing, and marketing activities, which may delay our ability to develop, market and sell any products we may develop. Any reductions in government spending in countries outside the United States may also impact us negatively, such as by limiting the functioning of international regulatory agencies in countries outside the United States or by eliminating programs on which we may rely.

***Our employees, independent contractors, consultants, commercial partners, principal investigators, or CROs may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements, which could have a material adverse effect on our business.***

We are exposed to the risk of fraud or misconduct by employees, independent contractors, consultants, commercial partners, principal investigators, or CROs, which could include intentional, reckless, negligent, or unintentional failures to comply with FDA regulations, comply with applicable fraud and abuse laws, provide accurate information to the FDA, report financial information or data accurately, or disclose unauthorized activities to us. This misconduct could also involve the improper use or misrepresentation of



information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation. It is not always possible to identify and deter this type of misconduct, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, financial condition and results of operations, including the imposition of significant fines or other sanctions. Further, even if we are successful in asserting a defense, we may incur substantial costs in preparing and maintaining our defense and any such action would be time- and resource-intensive and potentially divert management's attention from the business, which could adversely affect our business and results of operations.

#### **Risks Related to our Business Operations**

*It is difficult to evaluate our current business, predict our future prospects and forecast our financial performance and growth.*

To date our business activities have been focused primarily on the development and regulatory approval of cytisinicline and its various alternative forms. Although we have not generated revenue to date, we expect that, after any regulatory approval, any receipt of revenue will be attributable to sales of cytisinicline, primarily in the United States, the EU (including the U.K.) and Asia. Because we devote substantially all of our resources to the development of cytisinicline and rely on cytisinicline as our sole source of potential revenue for the foreseeable future, any factors that negatively impact this product, or result in decreasing product sales, would materially and adversely affect our business, financial condition and results of operations.

*Our future success depends in part on our ability to attract, retain, and motivate other qualified personnel.*

We will need to expand and effectively manage our managerial, operational, financial, development and other resources in order to successfully pursue our development and commercialization efforts for our existing and future product candidates. We expect to need additional scientific, technical, operational, financial and other personnel. Our success depends on our continued ability to attract, retain and motivate highly qualified personnel, such as management, clinical and preclinical personnel, including our executive chairman Thomas B. King, and our executive officers Richard Stewart, Cindy Jacobs, Jaime Xinos and Jerry Wan. In addition, although we have entered into employment agreements with each of Mr. King, Mr. Stewart, Dr. Jacobs, Ms. Xinos and Mr. Wan, such agreements permit those executives to terminate their employment with us at any time, subject to providing us with advance written notice.

We may not be able to attract and retain personnel on acceptable terms, if at all, given the competition among numerous pharmaceutical and biotechnology companies for individuals with similar skill sets. In addition, failure to succeed in development and commercialization of cytisinicline may make it more challenging to recruit and retain qualified personnel. The inability to recruit and retain qualified personnel, or the loss of the services of our current personnel may impede the progress of our research, development, and commercialization objectives and would negatively impact our ability to succeed in our product development strategy.

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

We will need to expand our organization as we prepare for potential commercialization of cytisinicline, which may require us to divert a disproportionate amount of our attention away from our day-to-day activities and devote a substantial amount of time to managing these growth activities. We do not currently have a commercial infrastructure, and we may not be able to successfully develop a commercial infrastructure to support the commercialization of cytisinicline on the timeline needed, or at all. Commercialization requires significantly greater financial and organizational resources, which may not be available to us. We may not be able to effectively manage the expansion of our operations, which may result in weaknesses in its infrastructure, operational mistakes, loss of business opportunities, loss of employees, and reduced productivity among remaining employees. Expanded growth and commercialization requires significant capital expenditures and may divert financial resources from other projects, such as the development of additional product candidates. If we are unable to effectively manage our growth or commercialize plans, our expenses may increase more than expected, our ability to generate and/or grow revenue could be reduced and we may not be able to implement our business strategy. Our future financial performance and our ability to commercialize product candidates and compete effectively will depend, in part, on our ability to effectively manage any future growth and commercialization.

*In the future, we may invest in the development of additional indications for cytisinicline. If we invest in and are unsuccessful in developing additional indications for cytisinicline, our business, financial condition and results of operations may be adversely affected.*

In the future, we may invest in the research and development of new indications for cytisinicline to address nicotine addictions associated with the use of e-cigarette, or vaping, products. Given their recent introduction, the use of vaping products is not fully understood which may increase the risk of failure in this area. We expect that we will need to invest significant amounts of capital to pursue development of an e-cigarette cessation indication. If we are unable to provide such additional capital when needed, we may be unable to complete the development, regulatory approval and commercialization of an e-cigarette cessation indication.

The development of additional indications for cytisinicline is highly uncertain. During the research and development cycle, we may expend significant time and resources on developing additional indications without any assurance that we will recoup our investments or that our efforts will be commercially successful. A high rate of failure is inherent in the discovery and development of additional indications, and failure can occur at any point in the process, including late in the process after substantial investment. Further, any new indications may not be accepted by physicians and the medical community at large, and competitors may develop and market equivalent or superior products. Failure to launch commercially successful new indications for cytisinicline after significant investment could have a material adverse effect on our business, financial condition and results of operations.

***Our internal computer systems, or those of our third-party collaborators or other service providers, may fail or suffer security breaches and cyber-attacks, which could result in a material disruption of our development programs.***

We believe that we take reasonable steps that are designed to protect the security, integrity and confidentiality of the information we collect, use, store, and disclose, but inadvertent or unauthorized data access may occur despite our efforts. Our system protections may be ineffective or inadequate, or we could be impacted by software bugs or other technical malfunctions, as well as employee error or malfeasance. Additionally, privacy and data protection laws are evolving, and it is possible that these laws may be interpreted and applied in a manner that is inconsistent with our data handling safeguards and practices that could result in fines, lawsuits, and other penalties, and significant changes to our or our third-party collaborators or service providers business practices and products and service offerings. To the extent that the measures we or our third-party collaborators or service providers have taken prove to be insufficient or inadequate, we may become subject to litigation, breach notification obligations, or regulatory or administrative sanctions, which could result in significant fines, penalties, damages, harm to our reputation, or loss of customers. While we have not experienced any material losses as a result of any system failure, accident or security breach to date, we have been the subject of certain phishing attempts in the past. If such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our development programs and our business operations, whether due to a loss of our trade secrets or other proprietary information or other similar disruptions. Additionally, a party who circumvents our security measures could, among other effects, appropriate patient information or other proprietary data, cause interruptions in our operations, or expose our collaborators to hacks, viruses, and other disruptions. For example, the loss of clinical trial data from completed or future clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. In addition, insurance coverage to compensate for any losses associated with such events, if available, may not be adequate to cover all potential losses. The development and maintenance of these systems, controls and processes is costly and requires ongoing monitoring and updating as technologies change and efforts to overcome security measures become increasingly sophisticated.

To the extent that any disruption, security breach, or cyber-attack were to result in a loss of, or damage to, our data or applications, or inappropriate disclosure of personal, confidential or proprietary information, we could incur liability, our competitive position could be harmed and the further development and commercialization of our product candidate could be delayed. Depending on the nature of the information compromised, in the event of a data breach or other unauthorized access to our patient data, we may also have obligations to notify patients and regulators about the incident, and we may need to provide some form of remedy, such as a subscription to credit monitoring services, pay significant fines to one or more regulators, or pay compensation in connection with a class-action settlement (including under the new private right of action under the California Consumer Privacy Act of 2018). Such breach notification laws continue to evolve and may be inconsistent from one jurisdiction to another. Complying with these obligations could cause us to incur substantial costs and could increase negative publicity surrounding any incident that compromises customer data. Additionally, the financial exposure from the events referenced above could either not be insured against or not be fully covered through any insurance that we may maintain or obtain in the future, and there can be no assurance that the limitations of liability in any of our contracts would be enforceable or adequate or would otherwise protect us from liabilities or damages as a result of the events referenced above. Any of the foregoing could have an adverse effect on our business, reputation, financial condition and results of operations.

#### **Risks Related to Our Reliance on Third Parties**

***We expect to continue to rely on third parties to manufacture cytisinicline. We currently exclusively rely on Sopharma to manufacture cytisinicline for use in clinical trials and plan to engage other third parties for our manufacturing process, including to manufacture cytisinicline on a commercial scale, if approved. Our commercialization of cytisinicline could be stopped, delayed or made less profitable if Sopharma fails to obtain approval of government regulators, fails to provide us with sufficient quantities of product or fails to do so at acceptable quality levels or prices.***

We do not currently have, nor do we currently plan to develop, the internal infrastructure or capability to manufacture our clinical supplies for use in the conduct of our clinical trials, and we lack the resources and the capability to manufacture cytisinicline on a clinical or commercial scale. We currently exclusively rely on Sopharma to manufacture cytisinicline for use in clinical trials and plan to engage other third parties for our manufacturing process, including, if cytisinicline is approved, to manufacture cytisinicline on a commercial scale, with tableting, blistering and packaging. We may encounter technical difficulties or delays in the transfer of cytisinicline manufacturing on a commercial scale to other third-party manufacturers, encounter difficulties and delays in identifying third-party manufacturers other than Sopharma. We may be unable to enter into agreements for commercial supply with third-party manufacturers on acceptable terms, or at all.

Sopharma and potential other third-party manufacturers are subject to regulatory requirements covering manufacturing, testing, quality control and record keeping relating to product candidates and are also subject to ongoing inspections by regulatory agencies. While Sopharma has been subject to oversight by regulators in Europe and Bulgaria, they have never been inspected by the FDA and there is no assurance that their quality systems will be satisfactory to pass a pre-approval inspection by the FDA. Failure by Sopharma or any of our potential third-party manufacturers to comply with applicable regulations may result in long delays and interruptions to our product candidate supply while we seek to secure another supplier that meets all regulatory requirements.

Our reliance on Sopharma and potential other third-party manufacturers exposes us to the following additional risks:

- Sopharma and potential other third-party manufacturers might be unable to timely manufacture cytisinicline or produce the quantity and quality required to meet our clinical and commercial needs, if any;
- Sopharma and potential other third-party manufacturers may not be able to execute our manufacturing procedures appropriately;
- Sopharma and potential other third-party manufacturers may not perform as agreed or may not remain in the contract manufacturing business for the time required to supply our clinical trials or to successfully produce, store and distribute our products;
- Sopharma and potential other third-party manufacturers are or will be subject to ongoing periodic unannounced inspection by the FDA and corresponding state agencies to ensure strict compliance with cGMPs and other government regulations and corresponding foreign standards. We do not have control over Sopharma's, or other third parties', compliance with these regulations and standards;
- we may not own, or may have to share, the intellectual property rights to any improvements made by Sopharma and potential other third-party manufacturers in the manufacturing process for cytisinicline;
- we do not own all the intellectual property rights to cytisinicline, and Sopharma and potential other third-party manufacturers could license such rights to third parties or begin supplying other third parties with cytisinicline; and
- Sopharma and potential other third-party manufacturers could breach or terminate their agreement with us.

Each of these risks could delay our clinical trials, the approval, if any, of cytisinicline by the FDA or the commercialization of cytisinicline or result in higher costs or deprive us of potential product revenue.

We currently rely on Sopharma to package the cytisinicline used in our clinical trials. If Sopharma fails to timely deliver the supplies needed, then our clinical studies could be delayed materially. Sopharma may fail to perform under their contractual obligations or may fail to deliver the required commercial product on a timely basis and at commercially reasonable prices. If we are required to identify and qualify an alternate manufacturer, we may be forced to delay or suspend our clinical trials.

The manufacture of medical products is complex and requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls. Manufacturers of medical products often encounter difficulties in production, particularly in scaling up and validating initial production and absence of contamination. These problems include difficulties with production costs and yields, quality control, including stability of the product, quality assurance testing, operator error, shortages of qualified personnel, as well as compliance with strictly enforced federal, state and foreign regulations. Furthermore, if contaminants are discovered in the supply of cytisinicline or in the Sopharma manufacturing facilities, such manufacturing facilities may need to be closed for an extended period of time to investigate and remedy the contamination. We cannot be assured that any stability or other issues relating to the manufacture of cytisinicline will not occur in the future. Additionally, Sopharma may experience manufacturing difficulties due to resource constraints or as a result of labor disputes or political instability in the countries in which Sopharma conducts its operations. For example, the military conflict between Russia and Ukraine may increase the likelihood of supply interruptions and hinder our ability to find the materials we need to make our product candidate. If Sopharma were to encounter any of these difficulties, or otherwise fail to comply with its contractual obligations, our ability to provide our product candidate to patients in clinical trials could be delayed or suspended. Any delay or interruption in the supply of clinical trial

supplies could delay the completion of clinical trials, increase the costs associated with maintaining clinical trial programs and, depending upon the period of delay, require us to commence new clinical trials at additional expense or terminate clinical trials completely. Similar political instability could also harm the commercial production and supply of cytisinicline in the event that cytisinicline is ultimately approved for commercial sale.

In June 2021, Pfizer Inc. halted the distribution of its smoking cessation drug, Chantix (varenicline), after heightened levels, above the FDA's acceptable daily intake limit, of nitrosamines were found in some lots of Chantix pills. In September 2021, Pfizer announced a nationwide recall in the United States of all lots of Chantix and have also withdrawn the product in other countries around the globe. We have undertaken a review of cytisinicline in accordance with regulatory guidance to assess the risk of the presence of nitrosamine and other potential impurities. If contaminants, or impurities such as nitrosamines, are discovered in quantities above regulators' thresholds within our supply of cytisinicline, we may potentially delay product development and approval or have a material adverse impact on our business.

We and our third-party manufacturers may also be impacted by new legislation and regulations relating to the manufacture of medical products. For example, legislation has been introduced and passed in Congress to limit certain U.S. biotechnology companies from using equipment or services produced or provided by select Chinese biotechnology companies, including those affiliated with the manufacture of our API, Wuxi STA, and others in Congress have advocated for the use of existing executive branch authorities to limit those Chinese service providers' ability to engage in business in the U.S. We cannot predict what actions may ultimately be taken with respect to trade relations between the United States and China or other countries, what products and services may be subject to such actions or what actions may be taken by the other countries in retaliation.

***We rely on third parties to conduct our clinical trials and perform other services. If these third parties do not successfully perform and comply with regulatory requirements, we may not be able to successfully complete clinical development, obtain regulatory approval or commercialize cytisinicline and our business could be substantially harmed.***

We plan to rely upon third-party CROs to conduct, monitor and manage our ongoing clinical programs. We rely on these parties for execution of clinical trials and manage and control only some aspects of their activities. We remain responsible for ensuring that each of our trials is conducted in accordance with the applicable protocol, legal, regulatory, and scientific standards and our reliance on the CROs does not relieve us of our regulatory responsibilities. We and our CROs and other vendors are required to comply with all applicable laws, regulations and guidelines, including those required by the FDA and comparable foreign regulatory authorities for all of our product candidates in clinical development. If we or any of our CROs or vendors fail to comply with applicable laws, regulations and guidelines, the results generated in our clinical trials may be deemed unreliable and the FDA or comparable foreign regulatory authorities may require us to perform additional clinical trials before approving our marketing applications. We cannot be assured that our CROs and other vendors will meet these requirements, or that upon inspection by any regulatory authority, such regulatory authority will determine that efforts, including any of our clinical trials, comply with applicable requirements. Our failure to comply with these laws, regulations and guidelines may require us to repeat clinical trials, which would be costly and delay the regulatory approval process.

If any of our relationships with these third-party CROs terminate, we may not be able to enter into arrangements with alternative CROs in a timely manner or do so on commercially reasonable terms. In addition, our CROs may not prioritize our clinical trials relative to those of other customers and any turnover in personnel or delays in the allocation of CRO employees by the CRO may negatively affect our clinical trials. If CROs do not successfully carry out their contractual duties or obligations or meet expected deadlines, continued development of cytisinicline may be delayed or terminated and we may not be able to meet our current plans with respect to cytisinicline. CROs may also involve higher costs than anticipated, which could negatively affect our financial condition and operations.

***We may not be able to establish or maintain the third-party relationships that are necessary to develop or potentially commercialize cytisinicline.***

Our business plan relies heavily on third-party collaborators, partners, licensees, clinical research organizations, clinical investigators, vendors or other third parties to support our research and development efforts and to conduct clinical trials for cytisinicline. We cannot guarantee that we will be able to successfully negotiate agreements for, or maintain relationships with, these third parties on a commercially reasonable basis, if at all. If we fail to establish or maintain such third-party relationships as anticipated, our business could be adversely affected.

***We may be unable to realize the potential benefits of any collaborations which we may enter into with other companies for the development and commercialization of cytisinicline.***

We may enter into a collaboration with third parties concerning the development and/or commercialization of cytisinicline; however, there is no guarantee that any such collaboration will be successful. Collaborations may pose a number of risks, including:

- collaborators often have significant discretion in determining the efforts and resources that they will apply to the collaboration, and may not commit sufficient resources to the development, marketing or commercialization of cytisinicline;
- collaborators may not perform their obligations as expected;
- any such collaboration may significantly limit our share of potential future profits from the associated program, and may require us to relinquish potentially valuable rights to cytisinicline, or other potential products or proprietary technologies or grant licenses on terms that are not favorable to us;
- collaborators may cease to devote resources to the development or commercialization of cytisinicline if the collaborators view cytisinicline as competitive with their own products or product candidates;
- disagreements with collaborators, including disagreements over proprietary rights, contract interpretation or the course of development, might cause delays or termination of the development or commercialization of cytisinicline, and might result in legal proceedings, which would be time consuming, distracting and expensive;
- collaborators may be impacted by changes in their strategic focus or available funding, or business combinations involving them, which could cause them to divert resources away from the collaboration;
- collaborators may infringe the intellectual property rights of third parties, which may expose us to litigation and potential liability;
- the collaborations may not result in us achieving revenues to justify such transactions; and
- collaborations may be terminated and, if terminated, may result in a need for us to raise additional capital to pursue further development or commercialization of cytisinicline.

As a result, a collaboration may not result in the successful development or commercialization of cytisinicline.

***We enter into various contracts in the normal course of our business in which we indemnify the other party to the contract. In the event we have to perform under these indemnification provisions, it could have a material adverse effect on our business, financial condition and results of operations.***

In the normal course of business, we enter into academic, commercial, service, collaboration, licensing, consulting and other agreements that contain indemnification provisions. With respect to our academic and other research agreements, we typically indemnify the institution and related parties from losses arising from claims relating to the products, processes or services made, used, sold or performed pursuant to the agreements for which we have secured licenses, and from claims arising from our or our sublicensees' exercise of rights under the agreement. With respect to our collaboration agreements, we indemnify our collaborators from any third-party product liability claims that could result from the production, use or consumption of the product, as well as for alleged infringements of any patent or other intellectual property right by a third party. With respect to consultants, we indemnify them from claims arising from the good faith performance of their services.

Should our obligation under an indemnification provision exceed applicable insurance coverage or if we were denied insurance coverage, our business, financial condition and results of operations could be adversely affected. Similarly, if we are relying on a collaborator to indemnify us and the collaborator is denied insurance coverage or the indemnification obligation exceeds the applicable insurance coverage, and if the collaborator does not have other assets available to indemnify us, our business, financial condition and results of operations could be adversely affected.

***We may rely on third parties to perform many essential services for any of our current or future product candidates that we commercialize, including services related to warehousing and inventory control, distribution, government price reporting, customer service, accounts receivable management, cash collection, and adverse event reporting. If these third parties fail to perform as expected or to comply with legal and regulatory requirements, our ability to commercialize any of our current or future product candidates will be significantly impacted and we may be subject to regulatory sanctions.***

We may retain third-party service providers to perform a variety of functions related to the sale and distribution of any of our current or future product candidates, key aspects of which will be out of our direct control. These service providers may provide key services related to warehousing and inventory control, distribution, government price reporting, customer service, accounts receivable management, and cash collection, and, as a result, most of our inventory may be stored at a single warehouse maintained by one such service provider. If we retain a service provider, we would substantially rely on it as well as other third-party providers that perform services for us, including entrusting our inventories of products to their care and handling. If these third-party service providers fail to comply with applicable laws and regulations, fail to meet expected deadlines, or otherwise do not carry out their contractual duties to us, or encounter physical or natural damage at their facilities, our ability to deliver product to meet commercial demand would be significantly impaired and we may be subject to regulatory enforcement action.

In addition, we may engage third parties to perform various other services for us relating to adverse event reporting, safety database management, fulfillment of requests for medical information regarding our product candidates and related services. If the quality or accuracy of the data maintained by these service providers is insufficient, or these third parties otherwise fail to comply with regulatory requirements related to adverse event reporting, we could be subject to regulatory sanctions.

Additionally, if a third-party errs in calculating government pricing information from transactional data in our financial records, it could impact our discount and rebate liability and potentially cause government programs to overpay providers for our products, which could expose us to significant False Claims Act liability and other civil monetary penalties.

### **Risks Related to Commercialization of Cytisinicline**

***We face substantial competition and our competitors may discover, develop or commercialize products faster or more successfully than us.***

The development and commercialization of new products is highly competitive. We face competition from major pharmaceutical companies, specialty pharmaceutical companies, biotechnology companies, universities and other research institutions worldwide with respect to products for smoking cessation and other product candidates that we may seek to develop or commercialize in the future. We are aware that many companies have therapeutics marketed or in development for smoking cessation. We expect that our competitors and potential competitors have historically dedicated, and will continue to dedicate, significant resources to aggressively develop and commercialize their products in order to take advantage of the significant market opportunity.

We have and will continue to pursue new cytinicline products and alternative sources of cytinicline used for our products, including additional natural and synthetic sources and routes. The pursuit and development of alternative cytinicline products and sources is expensive, time consuming, involves significant risk and may not be commercially feasible. There is no guarantee that we will be successful, or that we will be able to develop new products or alternative cytinicline sources first before our competitors do.

Many of our competitors have substantially greater financial, name recognition, manufacturing, marketing, research, technical and other resources than us. Additional mergers and acquisitions in the biotechnology and pharmaceutical industries may result in even more resources being concentrated in our competitors. Further, our competitors may develop new products that are safer, more effective or more cost-efficient than cytinicline. Large pharmaceutical companies in particular have extensive expertise in non-clinical and clinical testing and in obtaining regulatory approvals for products. In addition, academic institutions, government agencies, and other public and private organizations conducting research may seek patent protection with respect to potentially competitive products or technologies. These organizations may also establish exclusive collaborative or licensing relationships with our competitors. Failure of cytinicline to effectively compete against established treatment options or in the future with new products currently in development would harm our business, financial condition, results of operations and prospects.

***The commercial success of cytinicline will depend upon the degree of market acceptance by physicians, patients, third-party payors, and others in the medical community. Failure to obtain or maintain adequate reimbursement or insurance coverage for products, if any, could limit our ability to market cytinicline and decrease our ability to generate revenue.***

Even with the approvals from the FDA and comparable foreign regulatory authorities, the commercial success of cytinicline will depend in part on the healthcare providers, patients, and third-party payors accepting cytinicline as medically useful, cost-effective,

and safe. Cytisinicline may not gain market acceptance by physicians, patients and third-party payors. The degree of market acceptance of cytisinicline will depend on a number of factors, including but not limited to:

- the safety and efficacy of cytisinicline as demonstrated in clinical trials and potential advantages over competing treatments, if any;
- the clinical indications for which approval is granted, if any, including any limitations or warnings contained in cytisinicline's approved labeling;
- the cost of treatment;
- the perceived ratio of risk and benefit of these therapies by physicians and the willingness of physicians to recommend the product to patients based on such risks and benefits;
- the marketing, sales and distribution support for cytisinicline;
- the publicity concerning cytisinicline or competing products and treatments;
- the pricing and availability of third-party insurance coverage and reimbursement;
- negative perceptions or experiences with our competitor's products may be ascribed to cytisinicline; and
- availability of cytisinicline from other suppliers and/or distributors.

Even if cytisinicline displays a favorable efficacy and safety profile upon approval, market acceptance of cytisinicline remains uncertain. Efforts to educate the medical community and third-party payors on the benefits of cytisinicline, if any, may require significant investment and resources and may never be successful. Additionally, third-party payors, including governmental and private insurers, may also encourage the use of generic products instead of cytisinicline, or a generic version of cytisinicline, which require a prescription or may be available OTC. If our products fail to achieve an adequate level of acceptance by physicians, patients, third-party payors, and other healthcare providers, we will not be able to generate sufficient revenue to become or remain profitable.

The pricing, coverage, and reimbursement of cytisinicline, if any, must be sufficient to support our commercial efforts and other development programs and the availability and adequacy of coverage and reimbursement by third-party payors, including governmental and private insurers, are essential for most patients to be able to afford treatments. Sales of cytisinicline, if any, will depend substantially, both domestically and abroad, on the extent to which the costs of cytisinicline will be paid for or reimbursed by health maintenance, managed care, pharmacy benefit and similar healthcare management organizations, or government payors and private payors. If coverage and reimbursement are not available, or are available only in limited amounts, we may have to subsidize or provide cytisinicline for free or we may not be able to successfully commercialize cytisinicline.

In addition, there is significant uncertainty related to the insurance coverage and reimbursement for newly approved products. In the United States, the principal decisions about coverage and reimbursement for new products are typically made by the Centers for Medicare and Medicaid Services, or CMS, an agency within the U.S. Department of Health and Human Services, as CMS decides whether and to what extent a new product will be covered and reimbursed under Medicare. Private payors tend to follow the coverage reimbursement policies established by CMS to a substantial degree. It is difficult to predict what CMS will decide with respect to reimbursement for novel product candidates such as cytisinicline and what reimbursement codes cytisinicline may receive if approved.

Outside the United States, selling operations are generally subject to extensive governmental price controls and other price-restrictive regulations, and we believe the increasing emphasis on cost-containment initiatives in Europe, Canada, and other countries has and will continue to put pressure on the pricing and usage of products. In many countries, the prices of products are subject to varying price control mechanisms as part of national health systems. Price controls or other changes in pricing regulation could restrict the amount that we are able to charge for our products, if any. Accordingly, in markets outside the United States, the potential revenue may be insufficient to generate commercially reasonable revenue and profits.

Moreover, increasing efforts by governmental and private payors in the United States and abroad to limit or reduce healthcare costs may result in restrictions on coverage and the level of reimbursement for new products and, as a result, they may not cover or provide adequate payment for our products. We expect to experience pricing pressures in connection with products due to the increasing trend toward managed healthcare, including the increasing influence of health maintenance organizations and additional legislative changes. The downward pressure on healthcare costs in general, particularly prescription products, has and is expected to continue to increase in the future. As a result, profitability of cytisinicline, if any, may be more difficult to achieve even if regulatory approval is received.

***Sopharma may breach its supply agreement with us and sell cytisinicline into our territories or permit third parties to export cytisinicline into our territories and negatively affect our commercialization efforts of our products in our territories.***

We are currently dependent on the exclusivity provisions of our supply agreement with Sopharma to conduct our business and to prevent Sopharma from competing, directly and indirectly, with us in the United States and Western Europe. If Sopharma were to breach the exclusivity provisions of the supply agreement with us and sell or distribute cytisinicline directly into our territories or

permit third parties to export cytisinicline into our territories, among other things, the increase in competition within our anticipated markets could have a material adverse effect on our business, results of operations and financial condition.

***The illegal distribution and sale by third parties of counterfeit versions of cytisinicline, stolen products, or alternative third-party distribution and sale of cytisinicline could have a negative impact on our financial performance or reputation.***

Cytisinicline is not eligible for composition of matter patents in the United States as it is a naturally occurring substance. As such, third parties are able to manufacture, sell or distribute cytisinicline without royalties or other payments to us and compete with our products in the United States and potentially worldwide and negatively impact our commercialization efforts of our products. We are aware of additional cytisinicline products approved in several European countries and we may not be able to block other third parties from launching generic versions of cytisinicline. Third parties may also sell or distribute cytisinicline as an herbal or homeopathic product. Other than regulatory exclusivity or other limitations, there may be little to nothing to stop these third parties from manufacturing, selling or distributing cytisinicline. Because we have no ability to set rigorous safety standards or control processes over third-party manufacturers, sellers or distributors of cytisinicline, excluding Sopharma, these formulations of cytisinicline may be unsafe or cause adverse effects to patients and negatively impact the reputation of cytisinicline as a safe and effective smoking cessation aid.

Third parties could illegally distribute and sell counterfeit versions of cytisinicline, especially on online marketplaces, which do not meet the rigorous manufacturing and testing standards under cGMP. Counterfeit products are frequently unsafe or ineffective, and may even be life-threatening. Counterfeit medicines may contain harmful substances, the wrong dose of the active pharmaceutical ingredient or no active pharmaceutical ingredients at all. However, to distributors and users, counterfeit products may be visually indistinguishable from the authentic version.

Reports of adverse reactions to counterfeit products, increased levels of counterfeiting, or unsafe cytisinicline products could materially affect patient confidence in our cytisinicline product. It is possible that adverse events caused by unsafe counterfeit or other cytisinicline products that we do not produce will mistakenly be attributed to our cytisinicline product. In addition, thefts of inventory that are not properly stored at warehouses, plants or while in-transit, and which are sold through unauthorized channels could adversely impact patient safety, our reputation, and our business. Public loss of confidence in the integrity in cytisinicline as a result of counterfeiting, theft, or improper manufacturing processes could have a material adverse effect on our business, results of operations, and financial condition.

It is illegal to sell unapproved prescription medicines in the United States. Sopharma's cytisinicline brand is currently approved for sale in certain Central and Eastern European countries. Cytisinicline has not yet received a marketing approval from the FDA, and we intend to conduct the requisite clinical trials to obtain approval for the marketing of cytisinicline in the United States and in major global markets. We are aware that products purporting to be Sopharma's cytisinicline brand are available, via third-party internet sites, for importation in the United States and other global markets. We have no control over the authenticity of products purchased through these sites, which may be counterfeit or sourced from distributors in Central and Eastern Europe without authorization to sell into the United States or EU.

***We may attempt to form collaborations in the future with respect to cytisinicline, but we may not be able to do so, which may cause us to alter our development and commercialization plans.***

We may attempt to form strategic collaborations, create joint ventures or enter into licensing arrangements with third parties with respect to our programs that we believe will complement or augment our existing business. We may face significant competition in seeking appropriate strategic collaborators, and the negotiation process to secure appropriate terms is time consuming and complex. We may not be successful in our efforts to establish such a strategic collaboration for cytisinicline on terms that are acceptable to us, or at all. This may be because cytisinicline may be deemed to be at too early of a stage of development for collaborative effort, our research and development pipeline may be viewed as insufficient, the competitive or intellectual property landscape may be viewed as too intense or risky, or cytisinicline's patent protection insufficient, and/or third parties may not view cytisinicline as having sufficient potential for commercialization, including the likelihood of an adequate safety and efficacy profile.

Any delays in identifying suitable collaborators and entering into agreements to develop and/or commercialize cytisinicline could delay the development or commercialization of cytisinicline, which may reduce our competitiveness even if we reach the market. Absent a strategic collaborator, we would need to undertake development and/or commercialization activities at our own expense. If we elect to fund and undertake development and/or commercialization activities on our own, we may need to obtain additional expertise and additional capital, which may not be available to us on acceptable terms or at all. If we are unable to do so, we may not be able to develop our product candidate cytisinicline or bring it to market and our business may be materially and adversely affected.



*Even if we obtain regulatory approval in the United States or elsewhere to market any of our products, the commercial success of our products and our financial prospects will depend in part on the extent to which the costs of our products will be covered by third-party payors for prescription medications.*

Third-party payors, such as government health care programs, private health insurers, managed health care providers and other organizations, are increasingly challenging medical product prices and examining the medical necessity and cost-effectiveness of medical products, in addition to their safety and efficacy. If these third-party payors do not consider our products to be cost-effective compared to other therapies, they may not cover our products after approval as a benefit under their plans or, even if they do, the level of payment may not be sufficient to allow us, or a commercial partner, to sell our products on a profitable basis. If third-party payors do not provide adequate coverage and reimbursement, health care providers may not prescribe our products or patients may ask their health care providers to prescribe competing products with more favorable reimbursement.

Significant uncertainty exists as to the reimbursement status for newly approved prescription products, including coding, coverage and payment. There is no uniform policy requirement for coverage and reimbursement for prescription products among third-party payors in the United States; therefore, coverage and reimbursement for our products could differ significantly from payor to payor. In the United States, third-party payors often rely upon Medicare coverage policy and payment limitations in setting their own reimbursement policies, but they also have their own methods and approval process apart from Medicare coverage and reimbursement determinations. Accordingly, one third-party payor's determination to provide coverage for a product does not assure that other payors will also provide coverage for the product.

To secure coverage and reimbursement for any product that might be approved for sale, we may need to conduct expensive pharmacoeconomic studies in order to demonstrate the medical necessity and cost-effectiveness of the product to third-party payors, which costs would be in addition to those required to obtain FDA or other comparable regulatory approvals. A payor's decision to provide coverage for a product does not imply that an adequate reimbursement rate will be approved. 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. 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 third-party 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 United States.

Accordingly, the coverage determination process is often a time-consuming and costly process that will require us to provide scientific and clinical support for the use of our products to each payor separately, with no assurance that coverage and adequate payment will be applied consistently or obtained. The process for determining whether a payor will cover and how much it will reimburse a product may be separate from the process of seeking approval of the product or for setting the price of the product. Even if reimbursement is provided, market acceptance of our products may be adversely affected if the amount of payment for our products proves to be unprofitable for health care providers or less profitable than alternative treatments or if administrative burdens make our products less desirable to use.

Additionally, the containment of health care costs has become a priority of federal and state governments and the prices of drug products have been a focus in this effort. For example, there have been several recent U.S. Congressional inquiries and proposed bills designed to, among other things, bring more transparency to drug pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for drugs. We expect that federal, state and local governments in the United States will continue to consider legislation directed at lowering the total cost of health care. Individual states in the United States have increasingly passed legislation and implemented regulations designed to control pharmaceutical product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures, and, in some cases, designed to encourage importation from other countries and bulk purchasing. In December 2020, the U.S. Supreme Court held unanimously that federal law does not preempt the states' ability to regulate pharmaceutical benefit managers and other members of the health care and pharmaceutical supply chain, an important decision that may lead to further and more aggressive efforts by states in this area.

The Biden Administration has indicated that lowering prescription drug prices is a priority, but we do not yet know what steps the administration will take or whether such steps will be successful. It is uncertain whether and how future legislation or regulatory changes, to the ACA and otherwise, could affect prospects for our product candidates or what actions third-party payors may take in response to any such health care reform proposals or legislation. Adoption of price controls and cost containment measures, and adoption of more restrictive policies in jurisdictions with existing controls and measures reforms may prevent or limit our ability to generate revenue, attain profitability or commercialize our product candidates. Currently, the ACA and other federal laws and rules require most health insurance plans in the United States to cover some level of tobacco cessation treatments, including smoking

cessation counseling and medications. If these provisions are repealed, in whole or in part, our business, financial condition, or results of operations could be negatively affected.

Failure by us or a commercial partner to obtain timely or adequate coverage and pricing for our products, if approved, or obtaining such coverage and pricing at unfavorable levels, could materially adversely affect our business, financial conditions, results of operations and prospects.

***We may not be successful in any efforts to identify, license, discover, develop, or commercialize additional product candidates.***

Although a substantial amount of our effort will focus on clinical testing, approval, and potential commercialization of cytisinicline, our sole product candidate, the success of our business is also expected to depend in part upon our ability to identify, license, discover, develop, or commercialize additional product candidates. Research programs to identify new product candidates require substantial technical, financial, and human resources. We may focus our efforts and resources on potential programs or product candidates that ultimately prove to be unsuccessful. Our research programs or licensing efforts may fail to yield additional product candidates for clinical development and commercialization for a number of reasons, including but not limited to the following:

- our research or business development methodology or search criteria and process may be unsuccessful in identifying potential product candidates;
- we may not be able or willing to assemble sufficient resources to acquire or discover additional product candidates;
- our potential product candidates may not succeed in non-clinical or clinical testing;
- our potential product candidates may be shown to have harmful side effects or may have other characteristics that may make the products unmarketable or unlikely to receive marketing approval;
- competitors may develop alternatives that render our potential product candidates obsolete or less attractive;
- potential product candidates we develop may be covered by third parties' patents or other exclusive rights;
- the market for a potential product candidate may change during our program so that such a product may become unreasonable to continue to develop;
- a potential product candidate may not be capable of being produced in commercial quantities at an acceptable cost, or at all; and
- a potential product candidate may not be accepted as safe and effective by patients, the medical community, or third-party payors.

If any of these events occur, we may be forced to abandon our development efforts for a program or programs, or we may not be able to identify, license, discover, develop, or commercialize additional product candidates, which would have a material adverse effect on our business, financial condition or results of operations and could potentially cause us to cease operations.

**Risks Related to our Intellectual Property**

***We may not be successful in obtaining or maintaining necessary rights to cytisinicline, product compounds and processes for our development pipeline through acquisitions and in-licenses.***

Presently, we have rights to intellectual property through trade secrets, licenses, patents from third parties, and patents and applications that we own. Our product candidate may require specific formulations to work effectively and efficiently, and these rights may be held by others. We may be unable to acquire or in-license any compositions, methods of use, processes or other third-party intellectual property rights from third parties that we identify. The licensing and acquisition of third-party intellectual property rights is a competitive area, and a number of more established companies are also pursuing strategies to license or acquire third-party intellectual property rights that we may consider attractive. These established companies may have a competitive advantage over us due to their size, cash resources and greater clinical development and commercialization capabilities. In addition, companies that perceive us to be a competitor may be unwilling to assign or license rights to us. We also may be unable to license or acquire third-party intellectual property rights on terms that would allow us to make an appropriate return on our investment. If we are unable to successfully obtain rights to third-party intellectual property rights, our business, financial condition and prospects for growth could suffer.

***If we are unable to maintain effective proprietary rights for our product candidate or any future product candidates, we may not be able to compete effectively in our proposed markets.***

We currently rely primarily on trade secret protection and on confidentiality agreements to protect proprietary know-how that is not patentable or that we elect not to patent, processes for which patents are difficult to enforce and any other elements of our product candidate discovery and development processes that involve proprietary know-how, information or technology that is not covered by patents. Trade secrets can be difficult to protect, however, and even where they are protected, they generally provide less intellectual property protection to the holder of the trade secret than to a holder of a patent. We seek to protect our proprietary technology and processes, in part, by entering into confidentiality agreements with our employees, consultants, scientific advisors, and contractors. We also seek to preserve the integrity and confidentiality of our data and trade secrets by maintaining physical security of our premises and physical and electronic security of our information technology systems. While we have confidence in these individuals, organizations and systems, agreements or security measures may be breached, and we may not have adequate remedies for any breach. In addition, our trade secrets may otherwise become known or be independently discovered by competitors.

Although we expect all of our employees and consultants 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 or that our trade secrets and other confidential proprietary information will not be disclosed or that competitors will not otherwise gain access to our trade secrets or independently develop substantially equivalent information and techniques. Misappropriation or unauthorized disclosure of our trade secrets could impair our competitive position and may have a material adverse effect on our business, financial condition or results of operations. Additionally, if the steps taken to maintain our trade secrets are deemed inadequate, we may have insufficient recourse against third parties for misappropriating the trade secret.

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

We are currently developing cytisinicline in treating nicotine dependence for smoking cessation in adults. Our commercial success depends in part on our ability to develop, manufacture, market and sell our product candidates and use our proprietary technology without infringing the patent rights of third parties. We are not aware of any patents or patent applications that would prevent the development, manufacture or marketing of cytisinicline for smoking cessation.

We are aware of U.S. and foreign patents and pending patent applications owned by third parties that cover certain other therapeutic uses of cytisinicline. We are currently monitoring these patents and patent applications. We may in the future pursue available proceedings in the United States and foreign patent offices to challenge the validity of these patents and patent applications. In addition, or alternatively, we may consider whether to seek to negotiate a license of rights to technology covered by one or more of such patents and patent applications for these certain additional therapeutic uses. If any third-party patents or patent applications cover our product candidates or technologies in other therapeutic uses, we may not be free to manufacture or market our product candidates for additional therapeutic uses, absent such a license, which may not be available to us on commercially reasonable terms, or at all.

It is also possible that we have failed to identify relevant third-party patents or applications. For example, applications filed before November 29, 2000 and applications filed after that date that will not be filed outside the United States remain confidential until patents issue. Moreover, it is difficult for industry participants, including us, to identify all third-party patent rights that may be relevant to our product candidates and technologies because patent searching is imperfect due to differences in terminology among patents, incomplete databases and the difficulty in assessing the meaning of patent claims. We may fail to identify relevant patents or patent applications or may identify pending patent applications of potential interest but incorrectly predict the likelihood that such patent applications may issue with claims of relevance to our technology. In addition, we may be unaware of one or more issued patents that would be infringed by the manufacture, sale or use of a current or future product candidate, or we may incorrectly conclude that a third-party patent is invalid, unenforceable or not infringed by our activities. Additionally, pending patent applications that have been published can, subject to specified limitations, be later amended in a manner that could cover our technologies, our product candidates or the use of our product candidates.

There have been many lawsuits and other proceedings involving patent and other intellectual property rights in the pharmaceutical industries, including patent infringement lawsuits, interferences, oppositions, and reexamination proceedings before the U.S. Patent and Trademark Office, or USPTO, and corresponding foreign patent offices. U.S. and foreign issued patents and pending patent applications, which are owned by third parties, exist in the fields in which we are developing our product candidate. As the biotechnology and pharmaceutical industries expand and more patents are issued, the risk increases that our product candidate may be subject to claims of infringement of the patent rights of third parties.

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

successful claim of infringement against us, we may have to pay substantial damages, including treble damages and attorneys' fees for willful infringement, pay royalties, redesign our infringing products or obtain one or more licenses from third parties, which may be impossible or require substantial time and monetary expenditure.

***We intend to rely on patent rights for certain aspects of our product candidates and certain future product candidates. If we are unable to obtain or maintain an adequate proprietary position from this approach, we may not be able to compete effectively in our markets.***

Although we rely or will rely in part on trade secret protection as part of our intellectual property rights strategies, we also intend to rely on patent rights to protect certain aspects of our technologies and upon the patent rights of third parties from which we license certain of our technologies.

We have sought to protect our proprietary position by filing patent applications in the United States and certain other countries around the world related to future product candidates. This process is expensive and time consuming, and we may not be able to file and prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner or at all. It is also possible that we will fail to identify patentable aspects of our research and development output before it is too late to obtain patent protection.

The patent position of pharmaceutical companies generally is highly uncertain and involves complex legal and factual questions for which legal principles remain unsolved. The patent applications that we own may fail to result in issued patents with claims that cover our product candidates in the United States or in other foreign countries. There is no assurance that all potentially relevant prior art relating to our patent applications or our patents (once issued) have been found, which can invalidate a patent or prevent a patent from issuing from a pending patent application. Even if patents do successfully issue, and even if such patents cover our future product candidates, third parties may challenge their validity, enforceability, or scope, which may result in such patents being narrowed, found unenforceable or invalidated. Furthermore, even if they are unchallenged, our patents and patent applications may not adequately protect our intellectual property, provide exclusivity for our future product candidates, or prevent others from designing around our claims. Any of these outcomes could impair our ability to prevent competition from third parties, which may have an adverse impact on our business.

We cannot offer any assurances about which, if any, patents will issue, the breadth of any such patent or whether any issued patents will be found invalid and unenforceable or will be threatened by third parties. Any successful opposition to these patents or any other patents owned by or licensed to us after patent issuance could deprive us of rights necessary for the successful commercialization of any future product candidates that we may develop. Further, if we encounter delays in regulatory approvals, the period of time during which we could market a future product candidate under patent protection could be reduced.

If we cannot obtain and maintain effective protection of exclusivity from our regulatory efforts and intellectual property rights, including patent protection or data exclusivity, for our product candidates, we may not be able to compete effectively and our business and results of operations would be harmed.

***Changes in patent law could diminish the value of patents in general, thereby impairing our ability to protect our product candidates.***

Obtaining and enforcing patents in the biopharmaceutical industry involves both technological and legal complexity, and is therefore costly, time-consuming, and inherently uncertain. In addition, the United States has recently enacted and is currently implementing wide-ranging patent reform legislation. Recent U.S. Supreme Court rulings have narrowed the scope of patent protection available in certain circumstances and weakened the rights of patent owners in certain situations. In addition to increasing uncertainty with regard to our ability to obtain patents in the future, this combination of events has created uncertainty with respect to the value of patents once obtained, if any. Depending on decisions by the U.S. Congress, the federal courts and the USPTO, the laws and regulations governing patents could change in unpredictable ways that would weaken our ability to obtain new patents or to enforce our existing patents and patents that we might obtain in the future.

In *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, the U.S. Supreme Court held that certain claims to naturally occurring substances are not patentable. Cytisinicline is a naturally occurring product and is not patentable. Our intellectual property strategy involves novel formulations of cytinicline and there is no guarantee that such patents will be issued or if issued, will be broad enough to prevent competitors from developing competing cytinicline products. Although we do not believe that any patents that may issue from our pending patent applications directed at our product candidate, if issued in their currently pending forms, as well as patent rights licensed by us, will be found invalid based on this decision, we cannot predict how future decisions by the courts, the

U.S. Congress or the USPTO may impact the value of our patent rights. There could be similar changes in the laws of foreign jurisdictions that may impact the value of our patent rights or our other intellectual property rights.

***We may be subject to claims that our employees, consultants, or independent contractors have wrongfully used or disclosed confidential information of third parties or that our employees have wrongfully used or disclosed alleged trade secrets of their former employers.***

We employ individuals who were previously employed at other biotechnology or pharmaceutical companies. Although we have written agreements and make every effort to ensure that our employees, consultants, and independent contractors do not use the proprietary information or intellectual property rights of others in their work for us, we may in the future be subject to any claims that our employees, consultants, or independent contractors have wrongfully used or disclosed confidential information of third parties. Litigation may be necessary to defend against these claims. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel, which could adversely impact our business. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management and other employees.

***It is difficult and costly to protect our proprietary rights and as a result we may not be able to ensure their protection. In addition, patents have a limited lifespan and will eventually expire.***

Market exclusivity awarded by the FDA upon the approval of an NDA is limited in scope and duration. Our commercial success will depend in part on obtaining, maintaining, enforcing, and defending against third-party challenges, patent and trade secret protection for our current and future product candidates that we may develop, license or acquire, as well as the related manufacturing methods. We will be able to protect our technologies from unauthorized use by third parties to the extent that the technologies are covered by valid and enforceable patents or trade secrets.

The patent prosecution process is expensive and time consuming, and we may not be able to file and prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. It is also possible that we will fail to identify patentable aspects of our research and development output before it is too late to obtain patent protection. Moreover, should we enter into additional collaborations we may be required to consult with or cede control to collaborators regarding the prosecution, maintenance, and enforcement of our patent applications and patents. Therefore, these patents and patent applications may not be prosecuted and enforced in a manner consistent with the best interests of our business. The patent positions of pharmaceutical and biotechnology companies can be highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved. No consistent policy regarding the breadth of claims allowed in pharmaceutical or biotechnology patents has emerged to date in the United States. The patent situation outside the United States is even more uncertain. Changes in either the patent laws or in interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property. Accordingly, we cannot predict the breadth of claims that may be allowed or enforced in our patents and patent applications or in third-party patents and patent applications. The degree of future protection for our proprietary rights is uncertain because legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep our competitive advantage. Moreover, the patent application process is also subject to numerous risks and uncertainties, and there can be no assurance that we or any of our future development partners will be successful in protecting any of our current or future product candidates that we may develop, license, or acquire by obtaining and defending patents. For example:

- we may not have been the first to conceive of and reduce to practice the inventions covered by each of our pending patent applications and issued patents;
- we may not have been the first to file patent applications for these inventions;
- others may independently develop similar or alternative technologies or duplicate any of our product candidates or technologies;
- it is possible that none of the pending patent applications will result in issued patents;
- the issued patents may not cover commercially viable active products, may not provide us with any competitive advantages, or may be successfully challenged by third parties;
- we may not develop additional proprietary technologies that are patentable;
- patents of others may have an adverse effect on our business;

- noncompliance with requirements of governmental patent agencies can result in abandonment or lapse of a patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction, potentially allowing competitors to enter the market earlier than would otherwise have been the case;
- our competitors, many of whom have substantially greater resources than we do and many of whom have made significant investments in competing technologies, may seek or may have already obtained patents that will limit, interfere with, or eliminate our ability to make, use, and sell our potential product candidates; or
- there may be significant pressure on the U.S. government and international governmental bodies to limit the scope of available patent protection both inside and outside the United States for disease treatments that prove successful, as a matter of public policy regarding worldwide health concerns.

Patents have a limited lifespan. In most countries, including the United States, the expiration of a patent is typically 20 years from the date that the application for the patent is filed. Various extensions of patent term may be available in particular countries; however, in all circumstances the life of a patent, and the protection it affords, has a limited term. If we encounter delays in obtaining regulatory approvals, the period of time during which we could market a product under patent protection could be reduced. We expect to seek extensions of patent terms where these are available in any countries where we are prosecuting patents. Such possible extensions include those permitted under the Drug Price Competition and Patent Term Restoration Act of 1984 in the United States, which permits a patent term extension of up to five years to cover an FDA-approved product. The actual length of the extension will depend on the amount of patent term lost while the product was in clinical trials. However, the applicable authorities, including the USPTO and the FDA in the United States, and any equivalent regulatory authority in other countries, may not agree with our assessment of whether such extensions are available, and may refuse to grant extensions to our patents, or may grant more limited extensions than we request. If this occurs, our competitors may be able to take advantage of our investment in development and clinical trials by referencing our clinical and preclinical data, and then may be able to launch their product earlier than might otherwise be the case.

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

The USPTO and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment, and other similar provisions during the patent prosecution process. Periodic maintenance fees, renewal fees, annuity fees, and various other governmental fees on patents or patent applications will be due to be paid to the USPTO and various patent agencies outside of the United States in several stages over the lifetime of the patents and applications. We have systems in place to remind us to pay these fees, and we employ and rely on reputable law firms and other professionals to effect payment of these fees to the USPTO and non-U.S. patent agencies for the patents and patent applications we own and those that we in-license. We also employ reputable law firms and other professionals to help us comply with the various documentary and other procedural requirements with respect to the patents and patent applications that we own and those that we in-license. In some cases, an inadvertent lapse can be cured by payment of a late fee or by other means in accordance with the applicable rules. However, there are situations in which noncompliance can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. In such an event, our competitors might be able to enter the market and this circumstance would have a material adverse effect on our business.

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

Competitors may infringe our issued patents, our in-licensed patents, or other intellectual property that we own or in-license. To counter infringement or unauthorized use, we may be required to file infringement claims, which can be expensive and time consuming. Any claims we assert against perceived infringers could provoke these parties to assert counterclaims against us alleging that we infringe their patents. In addition, in a patent infringement proceeding, a court may decide that a patent of ours is invalid or unenforceable, in whole or in part; construe the patent's claims narrowly; or 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 proceeding could put one or more of our patents at risk of being invalidated or interpreted narrowly. 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.

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

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

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

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

**Risks Related to Our Common Stock**

***The price for our common stock is volatile.***

The market prices for our common stock and that of pharmaceutical, biotechnology and other life sciences companies have historically been particularly volatile. Some of the factors that may cause the market price of our common stock to fluctuate include:

- our ability to raise additional capital, the terms of such capital, and our ability to continue as a going concern;
- the ability of us or our partners to develop cytisinicline and other product candidates and conduct clinical trials that demonstrate such product candidates are safe and effective;
- the ability of us or our partners to obtain regulatory approvals for cytisinicline or other product candidates, and delays or failures to obtain such approvals;
- failure of any of our product candidates to demonstrate safety and efficacy, receive regulatory approval and achieve commercial success;
- the ability of us to establish a commercial infrastructure and complete other pre-commercialization and commercialization tasks to necessary to successfully commercialize cytisinicline should it be approved by the FDA;
- failure to maintain our existing third-party license, manufacturing and supply agreements;
- failure by us or our licensors to prosecute, maintain, or enforce our intellectual property rights;
- changes in laws or regulations applicable to our candidates;
- any inability to obtain adequate supply of product candidates or the inability to do so at acceptable prices;
- adverse regulatory authority decisions;
- introduction of new or competing products by our competitors;
- failure to meet or exceed financial and development projections we may provide to the public;
- 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 or our competitors;
- disputes or other developments relating to proprietary rights, including patents, litigation matters, and our ability to obtain intellectual property protection for our technologies;

- additions or departures of key personnel;
- significant lawsuits, including intellectual property or stockholder litigation;
- if securities or industry analysts do not publish research or reports about us, or if they issue an adverse or misleading opinion regarding our business and stock;
- changes in the market valuations of similar companies;
- general market or macroeconomic conditions and geopolitical conditions, including the current global economic recession, inflation and interest rates, and the increasingly volatile global economic conditions resulting from global conflicts;
- sales of our common stock us or our stockholders in the future;
- trading volume of our common stock;
- adverse publicity relating to our markets generally, including with respect to other products and potential products in such markets;
- changes in the structure of healthcare payment systems;
- period-to-period fluctuations in our financial results; and
- tweets or other social media posts related to our market and industry.

Moreover, the stock markets in general have experienced substantial volatility that has often been unrelated to the operating performance of individual companies. These broad market fluctuations may also adversely affect the trading price of our common stock. An increase in the market price of our common stock, which is uncertain and unpredictable, may be the sole source of gain from an investment in our common stock. An investment in our common stock may not be appropriate for investors who require dividend income. We have never declared or paid cash dividends on our capital stock and do not anticipate paying any cash dividends on our capital stock in the foreseeable future. We currently intend to retain all available funds and any future earnings to fund the development and growth of our business. As a result, capital appreciation, if any, of our common stock will be the sole source of gain for stockholders for the foreseeable future. Accordingly, an investment in our common stock may not be appropriate for investors who require dividend income or investors who are not prepared to bear a significant risk of losses from such an investment.

***A significant portion of our total outstanding shares of common stock may be sold into the public market at any point, which could cause the market price of our common stock to drop significantly, even if our business is doing well, and result in significant dilution to our stockholders.***

Sales of a substantial number of shares of our common stock in the public market could occur at any time, either by us or our stockholders. These sales, or the perception in the market that we or holders of a large number of shares intend to sell shares, could reduce the market price of our common stock. Our outstanding shares of common stock may be freely sold in the public market at any time to the extent permitted by Rules 144 and 701 under the Securities Act of 1933, as amended, or the Securities Act, or to the extent such shares have already been registered under the Securities Act and are held by non-affiliates.

In July 2024, we entered into the New Debt Agreement with the Lenders for term loans of up to \$20.0 million. Subject to certain terms and conditions, the Lenders may convert all or any part of the outstanding New Convertible Term Loan and accrued and unpaid interest at any time prior to maturity into shares of our common stock at a conversion price equal to (i) for the first tranche of \$10.0 million, \$7.00 per share, subject to customary anti-dilution adjustments and (ii) for the second and third tranches of \$5.0 million each, the greater of (x) \$4.854 per share, subject to customary anti-dilution adjustments, and (y) the lower of (a) 150% of the average of the closing sale price of our common stock during the 10 trading days preceding the effective date of such tranche and (b) 150% of the closing sale price of our common stock on the trading day immediately preceding the effective date of such tranche. Additionally, all outstanding amounts under the New Convertible Term Loan, including accrued and unpaid interest, will mandatorily convert into shares of our common stock, at the conversion price, on such date, if any, when the closing price per share of our common stock has been (i) for the first tranche, equal to or greater than \$24.00 for 30 consecutive trading days prior to such date and (ii) for the second and third tranches, three times the applicable conversion price for such tranche, in each case, for the 30 consecutive trading days prior to such date. We are aware that there can be no assurance that the New Convertible Term Loan will be available to us for borrowing nor whether the Lender will be willing to work with us on any modifications to the current New Convertible Term Loan or the New Debt Agreement.

As of September 30, 2024, there were 1,928,414 shares of our common stock subject to outstanding options and 1,115,750 subject to outstanding restricted stock units, almost all of which have been registered under the Securities Act on Form S-8. The shares so



registered can be freely sold in the public market after being issued to the option holder upon exercise, except to the extent they are held by an affiliate of ours, in which case such shares will become eligible for sale in the public market as permitted by Rule 144 under the Securities Act. Furthermore, as of September 30, 2024, there were approximately 18,032,322 shares of our common stock subject to outstanding warrants to purchase common stock, with a weighted average exercise price of \$5.06 per share, and 142,857 shares of our common stock subject to outstanding pre-funded warrants, with an exercise price of \$0.001 per share. To the extent any of these warrants are exercised, the shares underlying these warrants may be immediately sold in the public market. In February 2024, we announced the sale and issuance of warrants to purchase up to 13,086,151 shares of common stock (or pre-funded warrants), with an exercise price of \$4.906 per share (or \$4.905 per pre-funded warrant), in a concurrent private placement with the sale of 13,086,151 shares of common stock sold in a registered direct offering. We registered the shares underlying these warrants (or pre-funded warrants) for resale on Form S-3, which was declared effective on May 6, 2024. If these shares are issued upon exercise of the warrants (or pre-funded warrants), they may be immediately sold in the public market.

The sale of additional shares of our common stock, the conversion of the New Convertible Term Loan into shares of our common stock, the exercise of any of our outstanding warrants, the exercise of any of our outstanding options, or the settlement of our restricted stock units would have a dilutive impact on our existing stockholders and could cause the market price of our common stock to decline significantly. Sales of our common stock, the conversion of the New Convertible Term Loan, the exercise of any of our outstanding warrants, the exercise of any of our outstanding options, the settlement of our restricted stock units or the perception that such events will occur, could also encourage short sales by third parties, which could contribute to the further decline of the price of our common stock. Additionally, the sale of a substantial number of shares of our common stock, the conversion of the New Convertible Term Loan, the exercise of any of our outstanding warrants, the exercise of any of our outstanding options, the settlement of our restricted stock units or the perception that such events will occur, could make it more difficult for us to sell equity or equity-related securities in the future at a time and at a price that we might otherwise wish.

In addition, in the future, we plan to raise additional capital through private placements or public offerings of our equity or debt securities. We cannot be certain that additional funding will be available on acceptable terms, if at all. To the extent that we raise additional financing by issuing equity securities, we may do so at a price per share that represents a discount to the then-current per share trading price of our common stock and our stockholders may experience significant dilution. Any debt financing, if available, may involve restrictive covenants, such as limitations on our ability to incur additional indebtedness, limitations on our ability to acquire or license intellectual property rights and other operating restrictions that could adversely affect our ability to conduct our business.

***Because our merger resulted in an ownership change under Section 382 of the U.S. Internal Revenue Code for OncoGenex, pre-merger net operating loss carryforwards and certain other tax attributes are now subject to limitations.***

If a corporation undergoes an “ownership change” within the meaning of Section 382 of the U.S. Internal Revenue Code, the corporation’s net operating loss carryforwards and certain other tax attributes arising from before the ownership change are subject to limitations on use after the ownership change. In general, an ownership change occurs if there is a cumulative change in the corporation’s equity ownership by certain stockholders that exceeds fifty percentage points over a rolling three-year period. Similar rules may apply under state tax laws. Our 2017 merger involving OncoGenex and Achieve Life Sciences, Inc. resulted in an ownership change for OncoGenex and, accordingly, OncoGenex’s net operating loss carryforwards and certain other tax attributes will be subject to limitations on their use after the merger. Additional ownership changes in the future could result in additional limitations on the combined organization’s net operating loss carryforwards. Consequently, even if we achieve profitability, we may not be able to utilize a material portion of our net operating loss carryforwards and other tax attributes, which could have a material adverse effect on cash flow and results of operations.

***If equity research analysts do not publish research or reports, or publish unfavorable research or reports, about us, our business, or our market, our stock price and trading volume could decline.***

The trading market for our common stock is influenced by the research and reports that equity research analysts publish about us and our business. We do not have any control over the equity research analysts that provide research coverage of our common stock or the content and opinions included in their reports. The price of our stock could decline if one or more equity research analysts downgrades our stock or issue other unfavorable commentary or research. If one or more equity research analysts ceases coverage of our company or fails to publish reports on us regularly, demand for our stock could decrease, which in turn could cause our stock price or trading volume to decline.

## General Risk Factors

### *We are at risk of securities class action litigation.*

In the past, securities class action litigation has often been brought against a company following a decline in the market price of its securities, including in circumstances where such declines occur in close proximity to the announcement of clinical trial results. Additionally, our stock price and those of other biotechnology and biopharmaceutical companies have experienced significant stock price volatility in recent years. If we face such litigation, it could result in substantial costs and a diversion of management's attention and resources, which could harm our business.

### *We incur costs and demands upon management as a result of complying with the laws and regulations affecting public companies.*

We incur significant legal, accounting and other expenses associated with public company reporting requirements. We also incur costs associated with corporate governance requirements, including requirements under the Sarbanes-Oxley Act, as well as rules implemented by the SEC and The Nasdaq Capital Market. These rules and regulations impose significant legal and financial compliance costs and make some activities more time-consuming and costly. In addition, it may be difficult for us to attract and retain qualified individuals to serve on our board of directors or as executive officers, which may adversely affect investor confidence and could cause our business or stock price to suffer.

### *If we raise additional capital, the terms of the financing transactions may cause dilution to existing stockholders or contain terms that are not favorable to us.*

In the future, we plan to raise additional capital through private placements or public offerings of our equity or debt securities. We cannot be certain that additional funding will be available on acceptable terms, if at all. To the extent that we raise additional financing by issuing equity securities, we may do so at a price per share that represents a discount to the then-current per share trading price of our common stock and our stockholders may experience significant dilution. Any debt financing, if available, may involve restrictive covenants, such as limitations on our ability to incur additional indebtedness, limitations on our ability to acquire or license intellectual property rights and other operating restrictions that could adversely affect our ability to conduct our business.

### *Shareholder activists could cause a disruption to our business.*

An activist investor may indicate disagreement with our strategic direction or capital allocation policies and may seek representation on our board of directors. Our business, operating results or financial condition could be adversely affected and may result in, among other things:

- increased operating costs, including increased legal expenses, insurance, administrative expenses and associated costs incurred in connection with director election contests;
- uncertainties as to our future direction, which could result in the loss of potential business opportunities and could make it more difficult to attract, retain, or motivate qualified personnel, and strain relationships with investors and customers; and
- reduction or delay in our ability to effectively execute our current business strategy and to implement new strategies.

### *Anti-takeover provisions under Delaware law could make an acquisition of us more difficult and may prevent attempts by our stockholders to replace or remove our management.*

Because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporate Law, which prohibits stockholders owning in excess of 15% of our outstanding voting stock from merging or combining with us. Although we believe these provisions collectively will provide for an opportunity to receive higher bids by requiring potential acquirors to negotiate with our board of directors, they would apply even if the offer may be considered beneficial by some stockholders. In addition, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove then current management by making it more difficult for stockholders to replace members of the board of directors, which is responsible for appointing the members of management.

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

Our bylaws provide that the Court of Chancery of the State of Delaware is the sole and exclusive forum for any derivative action or proceeding brought on our behalf, any action asserting a breach of fiduciary duty owed by any of our directors, officers or other employees to us or our stockholders, any action asserting a claim against us arising pursuant to any provisions of the Delaware General Corporation Law, our certificate of incorporation or our bylaws, or any action asserting a claim against us that is governed by the internal affairs doctrine. The choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees, which may discourage such lawsuits against us and our directors, officers and other employees. If a court were to find the choice of forum provision contained in the bylaws to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions.

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

We are currently a "smaller reporting company" as defined in the Exchange Act, and are thus allowed to provide simplified executive compensation disclosures in our filings, are exempt from the provisions of Section 404(b) of the Sarbanes-Oxley Act requiring that an independent registered public accounting firm provide an attestation report on the effectiveness of internal control over financial reporting and have certain other decreased disclosure obligations in our SEC filings. We cannot predict whether investors will find our common stock less attractive because of our reliance on any of these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

***Failure to maintain effective internal control over financial reporting could have a material adverse effect on our reputation, results of operations and financial condition.***

Effective internal control over financial reporting is necessary for us to provide reliable financial reports, prevent fraud and operate successfully as a public company. Any failure to execute on our internal controls and continue to maintain effective internal controls, to timely implement any necessary additional improvement to our internal controls or to effect remediation of any future material weakness or significant deficiency could, among other things, result in losses from fraud or error, harm our reputation or cause investors to lose confidence in our reported financial information, all of which could have a material adverse effect on our reputation, results of operations, or financial condition.

Management reviews and updates our systems of internal controls and procedures, as appropriate. Any system of controls is based in part on certain assumptions and can provide only reasonable, not absolute, assurances that the objectives of the system are met. Any failure or circumvention of our controls and procedures or failure to comply with regulations related to controls and procedures could have a material adverse effect on our reputation, results of operations and financial condition.

***U.S. federal tax reform and changes in other tax laws could increase our tax burden and adversely affect our business and financial condition.***

In December 2017, the U.S. government enacted comprehensive tax legislation, the Tax Cuts and Jobs Act of 2017, significantly reforming the Internal Revenue Code of 1986, as amended. These changes include, among others, (i) a permanent reduction to the corporate income tax rate, (ii) a partial limitation on the deductibility of business interest expense, (iii) a shift of the U.S. taxation of multinational corporations from a tax on worldwide income to a territorial system (along with certain rules designed to prevent erosion of the U.S. income tax base) and (iv) a one-time tax on accumulated offshore earnings held in cash and illiquid assets, with the latter taxed at a lower rate.

In addition, beginning in 2022, tax legislation requires research and experimental expenditures to be capitalized and amortized ratably over a five-year period. Any such expenditures attributable to research conducted outside the United States must be capitalized and amortized over a 15-year period.

Notwithstanding the reduction in the corporate income tax rate, the overall impact of this tax reform is uncertain, and our business and financial condition could be adversely affected. Furthermore, it is uncertain if and to what extent various states will conform to the enacted federal tax law or any newly enacted federal legislation. In addition, new legislation or regulation which could affect our tax burden could be enacted by any governmental authority. We cannot predict the timing or extent of such tax related developments which could have a negative impact on our financial results. Additionally, we use our best judgment in attempting to quantify and reserve for these tax obligations. However, a challenge by a taxing authority, our ability to utilize tax benefits such as carryforwards or

tax credits, or a deviation from other tax related assumptions could have a material adverse effect on our business, results of operations, or financial condition.

## Item 6. Exhibits

Exhibit Number	Description	Incorporated by Reference				Filed/ Furnished Herewith
		Form	File No.	Exhibit	Filing Date	
10.1	<a href="#">Contingent Convertible Debt Agreement, dated July 25, 2024, between Achieve Life Sciences, Inc., and Silicon Valley Bank, a division of First-Citizens Bank &amp; Trust Company</a>	8-K	033-80623	10.1	July 29, 2024	
10.2	<a href="#">Registration Rights Agreement, dated July 25, 2024, between Achieve Life Sciences, Inc., and Silicon Valley Bank, a division of First-Citizens Bank &amp; Trust Company</a>	8-K	033-80623	10.2	July 29, 2024	
10.3	<a href="#">Separation and Release Agreement, dated August 26, 2024, between Achieve Life Sciences, Inc. and John Bencich</a>					X
10.4	<a href="#">Executive Employment Agreement, dated August 26, 2024, between Achieve Life Sciences, Inc. and Thomas B. King</a>					X
10.5	<a href="#">Open Market Sale AgreementSM, dated September 27, 2024, between Achieve Life Sciences, Inc. and Jefferies LLC</a>	8-K	033-80623	1.1	September 27, 2024	
31.1	<a href="#">Certification of Chief Executive Officer (Principal Executive and Financial Officer) pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>					X
32.1	<a href="#">Certification of Chief Executive Officer (Principal Executive and Financial Officer) pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>					X
101.INS	Inline XBRL Instance Document—the instance document does not appear in the Interactive Data File as its XBRL tags are embedded within the Inline XBRL document					X
101.SCH	Inline XBRL Taxonomy Extension Schema With Embedded Linkbase Documents					X
104	Cover page formatted as Inline XBRL and contained in Exhibit 101					X

# The certifications attached as Exhibits 32.1 and 32.2 accompany this Quarterly Report on Form 10-Q pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, and shall not be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.



**SIGNATURES**

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

ACHIEVE LIFE SCIENCES, INC.

Date: November 7, 2024

By: /s/ Richard Stewart  
Richard Stewart  
Chief Executive Officer (Principal Executive and Financial Officer)

August 26, 2024

John Bencich

Re: Terms of Separation

Dear John:

This letter confirms the agreement (“*Agreement*”) between you and Achieve Life Sciences, Inc. (the “*Company*”) concerning the terms of your Separation and offers you the compensation we discussed in exchange for a general release of claims and covenant not to sue.

1. Separation Date: August 21, 2024 is your last day of employment with the Company (the “*Separation Date*”).
  2. Resignation from Officer Positions and Board Membership: Effective as of August 21, 2024, you hereby resign from all officer and Board of Director positions with the Company and all subsidiaries thereof, without the need of acceptance or any further action by the Company.
  3. Acknowledgment of Payment of Wages: We will provide you one or more final paychecks for all wages, salary, earned bonuses, reimbursable expenses previously submitted by you, accrued vacation (if applicable) and any similar payments due to you from the Company as of the Separation Date on the next payroll date. The Company agrees to pay you, within ten (10) business days following the Effective Date, a sum of \$47,500 in lieu of your 30-day advance notice. By signing below, you acknowledge that the Company does not owe you any other amounts. Please promptly submit for reimbursement all final outstanding expenses, if any.
  4. Separation Compensation: In exchange for your agreement to the general release and waiver of claims and covenant not to sue set forth below and your other promises herein, the Company agrees to provide you with the following:
    - a. Severance: The Company agrees to pay you, within ten (10) business days following the Effective Date (as defined below) of this Agreement, a lump sum payment in the gross amount of \$855,000, less applicable state and federal payroll deductions, which equals eighteen (18) months of your base salary. In the event that the Company is subject to a Change in Control as defined in your Amended and Restated Employment Agreement as of September 28, 2020 (your “*Employment Agreement*”) within three months following the Separation Date, then you will receive (i) an additional payment in the gross amount of \$285,000, less applicable state and federal payroll deductions, which equals six (6) months of your base salary and (ii) an
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amount equal to the sum of twenty-four (24) months of your average monthly bonus earnings, where such average is calculated over the twenty-four (24) month period immediately preceding the Separation Date and based on your bonus paid in such 24 month period.

b. COBRA: Upon your timely election to continue your existing health benefits under COBRA, and consistent with the terms of COBRA and the Company's health insurance plan, the Company will pay you, within ten (10) business days following the Effective Date (as defined below) of this Agreement, a lump sum cash payment in an amount such that, after deducting all applicable federal, state and local income and withholding taxes due on this payment, the net amount is equivalent to the value of your monthly premium under COBRA for eighteen (18) months. In the event that the Company is subject to a Change in Control (as defined in your Employment Agreement) within three months following the Separation Date, then you will receive an additional payment in an amount such that, after deducting all applicable federal, state and local income and withholding taxes due on this payment, the net amount is equivalent to the value of your monthly premium under COBRA for six (6) months.

c. Advisory Engagement: Conditioned upon you executing and returning a signed copy of the advisor agreement attached hereto as Exhibit A (the "Advisor Agreement"), the Company agrees to engage you as an advisor immediately following the Separation Date. During the period of your advisor engagement, you will continue to vest in the Options (as defined below) in accordance with the applicable Stock Option Agreements.

By signing below, you acknowledge that you are receiving the Separation compensation outlined in this paragraph in consideration for waiving your rights to claims referred to in this Agreement and that you would not otherwise be entitled to the Separation compensation.

5. Return of Company Property: Except as otherwise set forth in the Advisor Agreement, you hereby warrant to the Company that you have returned to the Company all property or data of the Company of any type whatsoever that has been in your possession or control other than your computer which will be used under the Advisor Agreement and will be returned to the Company upon termination of the Advisor Agreement.

6. Post-Employment Obligations: You hereby acknowledge that: (a) you continue to be bound by the provisions of Section 7(c) of your Employment Agreement regarding confidential information ; (b) as a result of your employment with the Company, you have had access to the Company's proprietary and/or confidential information, and you will continue to hold all such information in strictest confidence and not make use of it on behalf of anyone; and (c) you must, and by your signature below confirm that you shall, deliver to the Company, no later than the Separation Date, all documents and data of any nature containing or pertaining to such information, and not take with you, or otherwise retain in any respect, any such documents or data or any reproduction thereof.

7. Equity Awards: Since 2014, you were granted various options (collectively the "Options") to purchase an aggregate of 322,131 shares of the Company's common stock, with the vested and unexercised portion of each option (the "Unexercised Vested Shares") and the unvested portion of each option (the "Unvested Shares") set forth in Exhibit B to this Agreement. In connection with your Separation, the time-based vesting restrictions (if any) of

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your Options shall immediately lapse as to an additional number of shares of Company common stock that is equal to the number of shares that would have time-vested if you had continued in employment for eighteen (18) months (the “**Acceleration**”). The number of Unexercised Vested Shares and Unvested Shares following the Acceleration are set forth in Exhibit B to this Agreement. Your rights concerning the Options will otherwise continue to be governed by the Stock Option Agreements. Per the Stock Option Agreements, you will have three (3) months following your cessation of service, which is expected to be on the expiration of the Advisor Agreement, to exercise the Unexercised Vested Shares. After this date, you will no longer have a right to exercise the Options as to any shares. The performance restricted stock units (“**PSUs**”) awarded to you in January 2023 for 100,000 PSUs and in January 2024 for 175,000 PSUs will remain outstanding and eligible to vest following your Separation, upon achievement by the Company of the milestones, in accordance with the existing terms of your PSU agreements, except as otherwise modified herein. For avoidance of doubt, the PSUs shall continue to remain outstanding and eligible to vest regardless of any continued service with the Company, whether under the Advisor Agreement or other service agreement. Additionally, the Company warrants that it will not modify the PSU agreements in any way that would affect your rights under this Agreement. In addition, you hereby expressly waive your right, as set forth in Section 6(d) of your Employment Agreement, to have all vesting restrictions on your Options and PSUs lapse, in the event that the Company is subject to a Change in Control (as defined in your Employment Agreement) within three months following the Separation Date.

**8. General Release and Waiver of Claims:**

**a.** The payments and promises set forth in this Agreement are in full satisfaction of all accrued salary, vacation pay, bonus and commission pay, profit-sharing, stock, stock options or other ownership interest in the Company, termination benefits or other compensation to which you may be entitled by virtue of your employment with the Company or your Separation from the Company. To the fullest extent permitted by law, you hereby release and waive any other claims you may have against the Company and its owners, agents, officers, shareholders, employees, directors, attorneys, subscribers, subsidiaries, affiliates, successors and assigns (collectively “**Releasees**”), whether known or not known, including, without limitation, claims under any employment laws, including, but not limited to, claims of unlawful discharge, breach of contract, breach of the covenant of good faith and fair dealing, fraud, violation of public policy, defamation, physical injury, emotional distress, claims for additional compensation or benefits arising out of your employment or your Separation of employment, claims under Title VII of the 1964 Civil Rights Act, as amended, the Washington Law Against Discrimination and any other laws and/or regulations relating to employment or employment discrimination, including, without limitation, claims based on age or under the Age Discrimination in Employment Act or Older Workers Benefit Protection Act, and/or claims based on disability or under the Americans with Disabilities Act.

**b.** You hereby acknowledge that you are aware of the principle that a general release does not extend to claims that the releasor does not know or suspect to exist in his or her favor at the time of executing the release, which, if known by him or her, must have materially affected his or her settlement with the releasee. With knowledge of this principle, you hereby agree to expressly waive any rights you may have to that effect.

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c. You and the Company do not intend to release claims that you may not release as a matter of law, including but not limited to any claims for enforcement of this Agreement. To the fullest extent permitted by law, any dispute regarding the scope of this general release shall be determined by an arbitrator under the procedures set forth in the arbitration clause below.

9. Covenant Not to Sue:

a. To the fullest extent permitted by law, at no time subsequent to the execution of this Agreement will you pursue, or cause or knowingly permit the prosecution, in any state, federal or foreign court, or before any local, state, federal or foreign administrative agency, or any other tribunal, of any charge, claim or action of any kind, nature and character whatsoever, known or unknown, which you may now have, have ever had, or may in the future have against Releasees, which is based in whole or in part on any matter released by this Agreement.

b. Nothing in this paragraph shall prohibit or impair you or the Company from complying with all applicable laws, nor shall this Agreement be construed to obligate either party to commit (or aid or abet in the commission of) any unlawful act.

10. Protected Rights:

a. You understand that nothing in this Agreement, including the General Release and Waiver of Claims, Covenant Not to Sue, Non-disparagement and Confidentiality sections contained herein, limits, impedes or restricts: (a) your ability to file a charge or complaint with the Equal Employment Opportunity Commission, the National Labor Relations Board (the "**NLRB**"), the Occupational Safety and Health Administration, the Securities and Exchange Commission or any other federal, state or local government agency or commission ("**Government Agencies**"); or (b) if you are a non-supervisory (as defined under the National Labor Relations Act (the "**NLRA**")) Company employee, you from exercising your protected rights under Section 7 of the NLRA, including your right to file an unfair labor practice charge with the NLRB and/or assist other current or former Company employees in doing so. You further understand that this Agreement does not limit your ability to communicate with any Government Agencies or otherwise participate and/or assist in any investigation or proceeding that may be conducted by any Government Agency, including providing documents (including this Agreement) or other information, without notice to the Company. This Agreement does not limit your right to receive an award for information provided to any Government Agencies or prohibit you from providing truthful information in response to a subpoena or other legal process.

b. Further, nothing in the Non-disparagement and Confidentiality sections, or otherwise in this Agreement, shall prohibit you from discussing or disclosing workplace or work-related conduct (including conduct at the workplace, at work-related events coordinated by or through the Company, between employees, or between the Company and an employee, whether on or off the employment premises) that you reasonably believed, under Washington state, federal, or common law, to be illegal discrimination, illegal harassment, illegal retaliation, a

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wage and hour violation, sexual assault, or that is recognized as against a clear mandate of public policy.

11. Non-disparagement: Subject to the Protected Rights section above, and otherwise to the fullest extent permitted by applicable law, you agree that you will not, directly or indirectly, make any disparaging oral or written statements that are disloyal or maliciously untrue (and specifically, made with knowledge of their falsity or with reckless disregard for the truth or falsity of the statements) regarding the Company and/or its products, services, directors, officers, employees and affiliated entities, including, but not limited to, any statement posted on social media (including online company review sites) or otherwise on the Internet, whether or not made anonymously or with attribution. In addition, we remind you of your continuing noncompete and nonsolicitation obligations as set forth in your Employment Agreement. To the fullest extent permitted by applicable law, the Company agrees that its officers and members of its Board of Directors will never make any negative or disparaging statements (orally or in writing) about you, except as required by law.

12. Arbitration: Except for any claim for injunctive relief arising out of a breach of a party's obligations to protect the other's proprietary information, the parties agree to arbitrate, in Seattle, Washington through JAMS, any and all disputes or claims arising out of or related to the validity, enforceability, interpretation, performance or breach of this Agreement, whether sounding in tort, contract, statutory violation or otherwise, or involving the construction or application of any of the terms, provisions, or conditions of this Agreement. Any arbitration may be initiated by a written demand to the other party. The arbitrator's decision shall be final, binding, and conclusive. The parties further agree that this Agreement is intended to be strictly construed to provide for arbitration as the sole and exclusive means for resolution of all disputes hereunder to the fullest extent permitted by law. The parties expressly waive any entitlement to have such controversies decided by a court or a jury.

13. Attorneys' Fees: If any action is brought to enforce the terms of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees, costs and expenses from the other party, in addition to any other relief to which the prevailing party may be entitled.

14. Confidentiality: Subject to the Protected Rights section above, and otherwise to the fullest extent permitted by applicable law, the contents, terms and conditions of this Agreement must be kept confidential by you and may not be disclosed except to your immediate family, accountant or attorneys or pursuant to subpoena or court order.

15. No Admission of Liability: This Agreement is not and shall not be construed or contended by you to be an admission or evidence of any wrongdoing or liability on the part of Releasees, their representatives, heirs, executors, attorneys, agents, partners, officers, shareholders, directors, employees, subsidiaries, affiliates, divisions, successors or assigns. This Agreement shall be afforded the maximum protection allowable under Washington Rules of Evidence 408 and/or any other state or federal provisions of similar effect.

16. Complete and Voluntary Agreement: This Agreement, together with any exhibits hereto and the applicable equity-related agreements, constitute the entire agreement between you and Releasees with respect to the subject matter hereof and supersedes all prior negotiations and

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agreements, whether written or oral, relating to such subject matter. You acknowledge that neither Releasees nor their agents or attorneys have made any promise, representation or warranty whatsoever, either express or implied, written or oral, which is not contained in this Agreement for the purpose of inducing you to execute the Agreement, and you acknowledge that you have executed this Agreement in reliance only upon such promises, representations and warranties as are contained herein, and that you are executing this Agreement voluntarily, free of duress or coercion.

17. Severability: The provisions of this Agreement are severable, and if any part of it is found to be invalid or unenforceable, including, without limitation, any part of the General Release, Covenant Not to Sue, Non-disparagement and/or Confidentiality sections above, the other parts shall remain fully valid and enforceable. Specifically, should a court, arbitrator, or government agency conclude that a particular claim may not be released as a matter of law, it is the intention of the parties that the general release, the waiver of unknown claims and the covenant not to sue above shall otherwise remain effective to release any and all other claims.

18. Modification; Counterparts; Electronic/PDF Signatures: It is expressly agreed that this Agreement may not be altered, amended, modified, or otherwise changed in any respect except by another written agreement that specifically refers to this Agreement, executed by authorized representatives of each of the parties to this Agreement. This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument. Execution of an electronic or PDF copy shall have the same force and effect as execution of an original, and a copy of a signature will be equally admissible in any legal proceeding as if an original.

19. Review of Separation Agreement; Expiration of Offer: You understand that you may take up to twenty-one (21) days to consider this Agreement (the "**Consideration Period**"). The offer set forth in this Agreement, if not accepted by you before the end of the Consideration Period, will automatically expire. By signing below, you affirm that you were advised to consult with an attorney prior to signing this Agreement. You also understand you may revoke this Agreement within seven (7) days of signing this document and that the Separation compensation to be provided to you pursuant to Section 3 will be provided only after the expiration of that seven (7) day revocation period.

20. Effective Date: This Agreement is effective on the eighth (8th) day after you sign it and without revocation by you (the "**Effective Date**").

21. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

If you agree to abide by the terms outlined in this Agreement, please sign and return it to me. I wish you the best in your future endeavors.

Sincerely,

Achieve Life Sciences, Inc.

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By: /s/ Richard Stewart  
Richard Stewart – Chief Executive Officer

READ, UNDERSTOOD AND AGREED

/s/ John Bencich  
John Bencich

Date: 8/26/2024

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**EXHIBIT A**  
**ADVISOR AGREEMENT**

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ACHIEVE LIFE SCIENCES, INC.

August 21, 2024

Via Email  
John Bencich

Re: Advisory Services to Achieve Life Sciences, Inc.

Dear John:

This letter agreement is to confirm our understanding with respect to your role as an advisor to Achieve Life Sciences, Inc. (the “**Company**”). The Company looks forward to a continued mutually beneficial association with you on the following terms, which are hereby made effective as of August 22, 2024, the date on which you first started providing advisory services to the Company (the “**Effective Date**”) and will continue through December 31, 2024 (the “**Advisor Termination Date**”) as follows:

1. Informal Management Consultations. From time to time, I and possibly other members of the Company’s management may contact you informally to provide advice relating to the Company’s business. You agree to be available to the Company’s management for consultations by telephone, email or in person, as your time and other business activities permit. You also agree to use reasonable efforts to attend meetings, if any, of the Company’s advisors, which we anticipate will occur infrequently.

2. Compensation. As compensation for your advisory services, you will be paid at an hourly rate of \$1,000 and the Company hereby guarantees you a minimum of ten (10) hours per month (the “**Minimum Monthly Hours**”), provided that, in the event that the Company terminates this letter agreement prior to the Advisor Termination Date, the Company will pay you a termination fee, calculated as if you had continue to provide services until the Advisor Termination Date for the Minimum Monthly Hours. In addition, you will continue to time-vest in all your Company equity awards that are subject to time-based service vesting and you will continue to vest in your PSUs in accordance with their existing terms and provisions set forth in the letter outlining the terms of your separation, dated August 26, 2024. The existing vesting schedule of such equity awards will remain unchanged so that you will vest in the same number of shares on each vesting date, provided that you remain in service as an advisor to the Company on each such vesting date.

3. Reimbursement of Expenses. The Company will reimburse you for reasonable out-of-pocket expenses that you incur in connection with your services under this letter agreement, including conference, travel, and lodging expenses, provided that the Chief Executive Officer of the Company approves any such expenses in advance.

4. Independent Contractor. Your relationship with the Company will be that of an independent contractor, and you will not be an agent, employee or representative of the Company. You understand that you will have no authority to enter into contracts or create obligations on behalf of the Company. Accordingly, you acknowledge that you will not be eligible for any

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employee benefits, and that the Company will not make any tax withholdings on your behalf. In the event you receive compensation from the Company in connection with your services under this agreement, you agree that you are obligated to report any such compensation as income, and you agree to pay all withholding taxes, social security, workers' compensation, unemployment and disability insurance or similar items required by any government agency. You agree to indemnify and hold the Company harmless from and against all damages, liabilities, losses, penalties, fines, expenses and costs (including reasonable fees and expenses of attorneys and other professionals) arising out of or relating to any obligation imposed by law on the Company to pay any withholding taxes, social security, unemployment or disability insurance or similar items in connection with any compensation received by you pursuant to this Agreement. The Company shall indemnify and hold you harmless from and against all claims and damages arising from any advice provided by you in good faith to the Company while performing services under this letter agreement.

5. Property of the Company. For purposes of this letter agreement, "**Designs and Materials**" shall mean all designs, discoveries, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, information and materials made, conceived or developed by you alone or with others that result from or that are made, conceived or developed in connection with the services you provide to the Company pursuant to this letter agreement. You hereby irrevocably transfer and assign to the Company any and all of your right, title and interest in and to Designs and Materials, including but not limited to all copyrights, patent rights, trade secrets, trademarks and moral rights. You agree: (a) to disclose promptly in writing to the Company all Designs and Materials; (b) to cooperate with and assist the Company to apply for, and to execute any applications and/or assignments to obtain, any patent, copyright, trademark or other legal protection for Designs and Materials in the Company's name as the Company deems appropriate; and (c) to otherwise treat all Designs and Materials as "**Confidential Information**," as defined below.

6. Confidential Information. You recognize that, in the course of performing your services under this letter agreement, you will acquire information and materials from the Company and knowledge about information of a confidential or secret nature concerning the Company, including without limitation, knowledge about the Company's business, products and planned products, marketing plans, financial information, forecasts, personnel, customers, clients, suppliers, experimental work and programming techniques. All such knowledge, information and materials acquired, the existence, terms and conditions of this letter agreement, and all Designs and Materials, are and will be the trade secrets and confidential and proprietary information of the Company (collectively, the "**Confidential Information**"). Confidential Information will not include, however, any information which is or becomes part of the public domain through no fault of yours or that the Company regularly gives to third parties without restriction on use or disclosure. You agree to hold all such Confidential Information in strict confidence, not to disclose it to others or use it in any way, commercially or otherwise (including without limitation lecturing upon or publishing articles concerning Confidential Information), except in performing your obligations under this letter agreement, and not to allow any unauthorized person access to it. You agree to return to the Company promptly upon request, and in any event after termination or expiration of this letter agreement, any and all records, paper, media or other embodiment containing any Confidential Information. Nothing in this Section 6 or otherwise in this agreement shall limit or restrict in any way your immunity from liability for disclosing Company's trade

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secrets as specifically permitted by 18 U.S. Code Section 1833, the pertinent provisions of which are attached hereto as Exhibit 1.

7. Conflicts of Interest. You hereby represent that the obligations contemplated hereby do not, in any way, conflict with any other agreement and/or commitment on your part. You agree to inform the Company promptly and in writing if any such conflict arises. You agree that you will not disclose to the Company any proprietary information that you currently have obtained, or may obtain in the future, from any other individual or organization.

8. Non-Solicitation. During the term in which you provide services to the Company pursuant to this letter agreement and for a one (1) year period following the termination of this letter agreement, you will not directly or indirectly solicit away any employees or consultants of the Company for your benefit or for the benefit of any other person or entity.

9. Termination. Either party may terminate this letter agreement for any reason upon five (5) days written notice. The provisions of Sections 4, 5, 6, 7, 8, 9 and 10 of this letter agreement will survive any expiration or termination of this letter agreement.

10. Interpretation. The terms contained in this letter agreement are subject to interpretation under the laws of the State of Washington without giving effect to that body of laws pertaining to conflict of laws, and can be amended only in writing and by joint agreement of both you and the Company. If any provision of this letter agreement is determined by any court or arbitrator of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such provision will be enforced to the maximum extent possible given the intent of the parties hereto. If such provision cannot be so enforced, such provision shall be stricken from this letter agreement and the remainder of this letter agreement shall be enforced as if such invalid, illegal or unenforceable provision had (to the extent not enforceable) never been contained in the letter agreement. This letter agreement constitutes the complete and exclusive understanding and agreement of you and the Company and supersedes all prior understanding and agreements, whether written or oral, with respect to the subject matter hereof. This letter agreement may be executed in two or more counterparts, including by electronic signature transmission, with the same force and effect as if each of the signatories had executed the same instrument.

If the foregoing represents your understanding of your role as an advisor to the Company, please sign below and return the executed letter agreement to me. Once again, we look forward to a continuing and mutually beneficial association with you.

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Very truly yours,

Achieve Life Sciences, Inc.

By: /s/ Richard Stewart  
Richard Stewart  
Chief Executive Officer

AGREED AND CONSENTED TO:

/s/ John Bencich  
John Bencich

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## EXHIBIT 1 TO ADVISOR AGREEMENT

### DEFEND TRADE SECRETS ACT, 18 U.S. CODE § 1833 NOTICE:

18 U.S. Code Section 1833 provides as follows:

**Immunity From Liability For Confidential Disclosure Of A Trade Secret To The Government Or In A Court Filing.** An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that (A) is made, (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

**Use of Trade Secret Information in Anti-Retaliation Lawsuit.** An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

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**EXHIBIT B**  
**OUTSTANDING OPTIONS**

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## Employment Agreement

THIS EMPLOYMENT AGREEMENT (the "Agreement") is entered into by and between Thomas B. King (the "Executive") and Achieve Life Sciences, Inc., a Washington corporation (the "Employer" or the "Company") as of August 26, 2024 (the "Effective Date").

### 1. Duties and Scope of Employment.

For the term of this Agreement ("Employment"), the Employer agrees to employ the Executive in the position of Executive Chairman. The Executive shall report directly to the Board of Directors (the "Board") of the Company. The Executive shall have such duties, authority and responsibilities that are commensurate with his being a senior executive officer of the Employer. During his employment, Executive will perform his duties faithfully and to the best of his ability and will, except as provided below and as set forth in Exhibit A, devote his full business efforts and time to the Employer. For the duration of the Executive's Employment term, Executive agrees not to actively engage in any other employment, occupation or consulting activity for any direct or indirect remuneration without the prior written approval of the Board, such approval not to be unreasonably withheld, provided that Executive will be permitted to continue providing services to the entities and in the roles set forth in the initialed Exhibit A (Outside Activities), provided that such activities do not materially adversely affect Executive's ability to perform and discharge his duties to the Employer.

### 2. Cash and Incentive Compensation.

**(a) Salary.** The Employer shall pay the Executive as compensation for his services a base salary at a gross annual rate of not less than \$495,000. Such salary shall be payable in accordance with the Employer's standard payroll procedures. The annual compensation specified in this Section 2(a), together with any increases in such compensation that the Employer may grant from time to time, is referred to in this Agreement as "Base Compensation."

**(b) Incentive Bonuses.** The Executive shall be eligible to receive a discretionary annual fiscal year incentive bonus ("Bonus") that the Board or Compensation Committee of the Board (the "Committee") shall determine and award in its sole discretion. Initially, the Executive shall be eligible to receive a Bonus constituting up to 50% of the Executive's Base Compensation. Such percentage may be modified by the Board or the Committee in its discretion from time to time. The Bonus will be based upon the achievement of specific milestones that will be determined by the Board and/or the Committee and confirmed to the Executive no later than ninety (90) days after the start of each fiscal year. Payment for each year's Bonus, if awarded, shall be made to the Executive no later than the fifteenth day of the third month after the later of the end of the calendar year or the Employer's taxable year in which the Bonus payment is no longer subject to a substantial risk of forfeiture for purposes of Section 409A of the Internal Revenue Code, as amended ("Section 409A"). The Board or the Committee may, in its sole discretion, determine not to award a Bonus or to award a Bonus at less than maximum eligibility. The Executive acknowledges that a Bonus is neither required nor guaranteed by this Agreement.

**(c) Equity Terms.** During the Executive's Employment, at the discretion of the Committee, the Executive shall be entitled to participate in the Company's equity compensation plans, as in effect from time to time, and the Executive shall be eligible to receive grants of Company equity ("Compensatory Equity"), as determined by the Committee, in its discretion from time to time. We will recommend to the Board or Committee that you be granted an option to purchase up to 195,000 shares of Common Stock of the Company (the "Option") under our 2018 Equity Incentive Plan (the "Plan") at the fair market value of the Company's Common Stock, as determined by the Board on the date the Board approves such grant. The shares subject to the Option will vest at the rate of 12/48th on the first annual anniversary of the vesting commencement date (which will be the Effective Date), and for an additional 1/48th per month thereafter, for so long as you remain employed by the Company through each vesting date. In addition, we will recommend to the Board or Committee that you be granted 455,000 performance-based restricted stock unit (the "PSUs") under the Plan. The PSUs shall have a term of four years from the Grant Date, and shall commence to vest on the first trading day after the public announcement of the achievement of the milestones as follows:

- 100% of the total Awards upon acceptance of the cytisinicline NDA by the U.S. Federal Drug Administration ("**FDA**") in a Day-74 Letter (or equivalent); or
  - 100% of the total Awards upon either: (a) marketing approval of cytisinicline by the FDA; or (b) signing a definitive agreement for the acquisition of the Company occurring by December 31, 2026.
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Both the Option and the PSUs will be granted to Executive in January 2025, subject to Executive's continued employment through the applicable grant date.

Further details on the Plan and any specific option or other equity award granted to Executive will be provided to the Executive upon approval of such option or other equity award by the Board or Committee.

**(d) Employee Benefits.** During the Executive's Employment, the Executive will be entitled to participate in the employee benefit plans of general applicability to other executives of the Company, as in effect from time to time, including, without limitation, the Company's group medical, dental, vision, disability, life insurance, director and officer liability insurance and flexible-spending account plans. The Company reserves the right to cancel or change the benefit plans and programs it offers to its employees at any time.

**(e) "Service" Definition.** For purposes of Section 3(b) of this Agreement, "Service" shall mean service by the Executive as an employee, consultant, advisor, director or other service provider of the Employer (or any subsidiary or parent or affiliated entity of the Employer).

### **3. Vacation and Indemnification.**

**(a) Vacation.** The Executive will be eligible for paid vacation in accordance with the Employer's vacation policy. Under the Employer's current vacation policy, the Executive is eligible for twenty-five (25) days per year of paid vacation. Unused vacation may not be carried over for more than twelve months after the completion of each fiscal year.

**(b) Indemnification; D&O Liability Insurance.** In addition to any right to indemnification under the Employer's certificate of incorporation and bylaws, Executive shall remain entitled to indemnification pursuant to that certain Indemnification Agreement between Executive and the Employer (the "Indemnification Agreement"). During the Executive's Employment, the Employer shall maintain officers' liability insurance for the Executive's benefit on terms and conditions no less favorable than the terms and conditions generally applicable to the Employer's other senior executive officers. The Employer's obligations under this Section 3(b) shall survive termination of the Executive's Service and also termination or expiration of this Agreement.

### **4. Business Expenses.**

During his Employment, the Executive shall be authorized to incur necessary and reasonable travel, entertainment and other business expenses in connection with his duties hereunder. The Employer shall promptly reimburse the Executive for such expenses upon presentation of appropriate supporting documentation, all in accordance with the Employer's generally applicable policies.

### **5. Term of Employment.**

**(a) Employment-at-Will.** The Employer and the Executive hereby acknowledge that the Executive's Employment is at-will. The Employer may terminate the Executive's Employment with or without Cause, by giving the Executive thirty (30) days advance notice in writing. The Executive may terminate his Employment by giving the Employer thirty (30) days advance notice in writing. The Executive's Employment shall terminate automatically in the event of his death.

**(b) Rights Upon Termination.** Upon the termination of the Executive's Employment for any reason (including death or Disability (as defined below)), the Executive shall be entitled to the compensation, benefits and reimbursements described in this Agreement through the effective date of the termination (the "Termination Date"), and the Employer shall make the following payments to the Executive (or his beneficiary) within 10 business days following the Termination Date: (i) all unpaid salary and accrued but unused vacation accrued through the Termination Date, (ii) any bonuses that have been determined to be awarded by the Board or the Committee, in accordance with the terms of any applicable plan, for any fiscal year of the Employer ended prior to the Termination Date but that remain unpaid to Executive as of the Termination Date, and (iii) any unreimbursed business expenses provided that Executive has submitted appropriate documentary substantiation as required by Company policy. The Executive may also be eligible for other post-Employment payments and benefits as provided in this Agreement or pursuant to other agreements (other than the Prior Agreements) or plans with the Employer. Upon the

Termination Date, the Executive shall have no further rights to receive compensation or benefits from the Employer except as set forth in Section 6 and pursuant to the terms of any benefit plans (including without limitation any equity compensation plans) of the Company in which the Executive is a participant.

## 6. Termination Benefits.

**(a) Severance Pay.** If there is an Involuntary Termination (as defined below) of the Executive's Employment, then, subject to the Executive's execution, delivery and non-revocation of a Release (defined below) within the time period described below, following the Executive's "separation from service" within the meaning of Section 409A, the Employer shall pay the Executive a single lump sum of cash in an amount equal to the sum of twelve (12) months (the "Severance Period") of the Executive's Base Compensation (not giving effect to any reduction in Base Compensation made in connection with such Involuntary Termination or giving rise to Good Reason). The cash lump sum amount payable under this Section 6(a) shall be made to the Executive on the first payroll date following the date that the Release becomes effective, provided that, if the severance payment could be paid in more than one taxable year depending on when the Release becomes effective, such payment will automatically be paid in the later year, regardless of when the Release is executed and becomes effective. The Executive shall also receive the benefits provided in Sections 6(b) and 6(c), and all such payments and benefits shall not be subject to mitigation or offset (except as specified in Section 6(b)). In order to be entitled to receive the severance described in this Section 6(a) (including the benefits provided in Sections 6(b), 6(c) and, if applicable, 6(d)), the Executive must execute, deliver and not revoke the Release within forty-five (45) calendar days following the Executive's separation from service (the date that is forty-five (45) calendar days following the Executive's separation from service is the "Release Deadline"). The Employer shall furnish the Release to the Executive on the date of his Involuntary Termination. The "Release" shall be a general release of all litigation and other claims against the Employer and all affiliates by the Executive and on Executive's behalf in a form satisfactory to the Employer.

**(b) Health Insurance.** If the Executive is entitled to receive the severance payment in Section 6(a), and if the Executive elects to continue his (and his dependents') health insurance coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), then the Employer shall pay Executive a lump sum cash payment that is equivalent to the value of Executive's monthly premium under COBRA for the number of months in the Severance Period. The cash lump sum amount payable under this Section 6(b) shall be made to the Executive on the first payroll date in the month following the month containing the Release Deadline.

**(c) Equity Vesting.** Notwithstanding the terms of any equity compensation plan of the Company or any agreement in connection with a grant of Compensatory Equity, if the Executive is entitled to receive the payments in Section 6(a), then the time-based vesting restrictions (if any) shall immediately lapse on an additional number of shares of Company common stock under all of the Executive's outstanding Compensatory Equity that is equal to the number of shares that would have time-vested if the Executive had continued in employment for the number of additional months following the Termination Date that is equal to the number of months in the Severance Period. The Executive shall be entitled to exercise any of his Compensatory Equity to the extent vested pursuant to this Section 6(c) or otherwise for such period as set forth in the terms of that Compensatory Equity.

**(d) Parachute Payments.** In the event that the payments and benefits provided for in this Agreement and the payments and/or benefits provided to, or for the benefit of, the Executive under any other Employer plan or agreement (such payments or benefits are hereinafter collectively referred to as the "Benefits") (i) constitute "parachute payments" within the meaning of Section 280G of the Internal Revenue Code and (ii) but for this Section 6(e), would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code (the "Excise Tax"), then the Benefits shall either be:

(i) delivered in full, or

(ii) delivered as to such lesser extent which would result in no portion of such Benefits being subject to the Excise Tax (such reduced amount is hereinafter referred to as the "Limited Amount"), whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the Excise Tax, results in the receipt by the Executive on an after-tax basis, of the greatest amount of Benefits, notwithstanding that all or some portion of such Benefits may be subject to the Excise Tax. If applicable, in order to effectuate the Limited Amount, the Employer shall first reduce those Benefits which are payable in cash and then reduce non-cash payments, in each case in reverse order beginning with Benefits which are to be paid the farthest in time from the date of determination that the Benefits will be limited by (e) (ii) above. Any calculations



and determinations required under this Section 6(e) shall be made in writing by the Company's independent auditor (the "Accountant") whose determination shall be conclusive and binding. The Executive and the Company shall furnish the Accountant such documentation as the Accountant may reasonably request in order to make a determination. The Employer shall pay for all costs that the Accountant may reasonably incur in connection with performing any calculations contemplated by this Section 6(e).

(e) **"Cause" Definition.** For all purposes under this Agreement, "Cause" shall mean any of the following committed by the Executive:

- (i) Willful failure to follow the reasonable and lawful directions of the Board relating to the performance of Executive's duties and responsibilities under this Agreement;
- (ii) Conviction of a felony (or a plea of guilty or *nolo contendere* by the Executive to a felony) that materially harms the Company;
- (iii) Acts of fraud, dishonesty, misappropriation or any other misconduct committed by the Executive which has caused or is reasonably expected to result in material injury to the Company;
- (iv) Willful misconduct by the Executive in the performance of the Executive's material duties required by this Agreement; or
- (v) A material breach of this Agreement.

The foregoing is an exclusive list of the acts or omissions that shall be considered "Cause" for the termination of the Executive's Employment by the Employer. With respect to the acts or omissions set forth in clauses (i), (iii), (iv) and (v) above, (x) the President shall provide the Executive with one (1) month advance written notice detailing the basis for the termination of Employment for Cause, (y) during the one-month period after the Executive has received such notice, the Executive shall have an opportunity to cure such alleged Cause events before any termination for Cause is finalized and (z) the Executive shall continue to receive the compensation and benefits provided by this Agreement during the one-month cure period. In addition, no act or failure to act of Executive shall be willful or intentional if performed in good faith with the reasonable belief that the action or inaction was in the best interest of the Employer.

(f) **"Involuntary Termination" Definition.** For all purposes under this Agreement, "Involuntary Termination" shall mean any of the following: (i) termination of the Executive's Employment by the Employer without Cause; (ii) the Executive's resignation of Employment for Good Reason; or (iii) termination of the Executive's Employment by the Employer for Disability.

(g) **"Good Reason" Definition.** For all purposes under this Agreement, "Good Reason" shall mean any of the following that occurs without the Executive's prior written consent: (i) the relocation of the Executive's primary work location by more than forty (40) miles from the Employer's current location in Bothell, Washington; (ii) a material reduction of the Executive's Base Compensation or Executive's employee benefits; (iii) any material reduction or diminution of the Executive's duties, authority or responsibilities; (iv) the Employer's material breach of this Agreement; or (v) the failure of any successor of the Company to expressly in writing assume the Company's obligations under this Agreement, in each case, provided that the Executive shall have provided the Employer with thirty (30) days advance written notice and an opportunity to cure such breach during such 30-day period.

(h) **"Disability" Definition.** For all purposes under this Agreement, "Disability" shall mean the Executive's incapacity due to physical or mental illness to perform his full-time duties with the Employer for a continuous period of three (3) months or an aggregate of six (6) months in any eighteen (18) month period.

#### 7. **Non-Solicitation, Non-Compete and Non-Disparagement**

(a) **Non-Solicitation.** During the period commencing on the date of this Agreement and continuing until the first anniversary of the Termination Date, the Executive shall not directly or indirectly, personally or through others, solicit, recruit,

or attempt to solicit or recruit any employee, agent, licensor, supplier, distributor, customer or partner of the Company to curtail, cancel or terminate such employment, agency or business relationship that it has with the Company or its affiliates.

**(b) Non-Compete.** During the period commencing on the date of this Agreement and continuing until the first anniversary of the Termination Date, the Executive shall not directly or indirectly, personally or through others, own, manage, operate, control, participate in, perform services for, make any investment in, assist, or otherwise carry on, any business engaged in the research and development of the Technology, as defined herein, and any other business set forth in a written business plans approved by the Board from time to time and which are still being pursued actively by the Company as of the Termination Date (the "Company Business") or any business that directly competes with the Company Business (other than in the course of performing duties to the Company or any of its affiliates as an employee or other service provider). The covenant set forth in this paragraph shall cover Executive's activities in the "Territory" which, for purposes of this Agreement, shall mean (a) King County and all other counties in the State of Washington, (b) all other states of the United States of America, and (c) any other countries of the world; *provided however*, that any of the foregoing locations is part of the Territory only if, in such location at any time during the two-year period immediately preceding the earlier of (i) the date of termination of Executive's employment with the Company or (ii) the date the Company seeks enforcement of this Section 7(b), the Company: (v) maintained non-trivial operations or facilities, (w) provided, marketed or made available goods or services, (x) had customers, (y) otherwise conducted business, or (z) took steps to do any of the foregoing.

Notwithstanding the foregoing, nothing contained in this Section 7(b) shall limit or otherwise affect the ability of Executive to (i) own not more than 1.0% of the outstanding capital stock of any entity that is engaged in a business competitive with the Company Business, provided that such investment is a passive investment and the Executive is not directly or indirectly involved in the management or operation of such business or otherwise providing consulting services to such business or (ii) work for a division, subsidiary, or group of an entity engaged in the Company Business provided that the particular division, subsidiary, or group in which Executive works is not engaged in the Company Business. As used herein, "Technology" means all ideas, concepts, business and trade names, trademarks, know-how, trade secrets, inventions, improvements, devices, methods, processes and discoveries, whether patentable or not, and whether or not reduced to writing or other tangible form or to actual or constructive practice which either: (i) are part of the technology licensed to OncoGenex Technologies Inc. under the UBC Licenses, as defined herein, or (ii) are otherwise developed or acquired on behalf of or by the Company or any affiliate of the Company, including but not limited to the technology licensed to the Company or any affiliate of the Company by clients for work to be performed for such clients pursuant to research contracts. As used herein, "UBC Licenses" means the licenses entered into by the University of British Columbia and OncoGenex Technologies Inc. effective November 1, 2001, September 1, 2002 and April 5, 2005 which define the terms under which OncoGenex Technologies Inc. has acquired an exclusive license to certain technology. It is understood that OncoGenex Technologies Inc. has granted the Company a limited right to use certain technology licensed under the UBC Licenses solely for the Company to perform work for OncoGenex Technologies Inc.

**(c) Confidential Information.** Except as required in the good faith opinion of the Executive in connection with the performance of the Executive's duties hereunder or as specifically set forth in this Section 7(c), the Executive shall, in perpetuity, maintain in confidence and shall not directly, indirectly or otherwise, use, disseminate, disclose or publish, or use for his benefit or the benefit of any person, firm, corporation or other entity any confidential or proprietary information or trade secrets of or relating to the Company or any of its affiliates, including, without limitation, information with respect to the Company's operations, processes, products, inventions, business practices, finances, principals, vendors, suppliers, customers, potential customers, marketing methods, costs, prices, contractual relationships, regulatory status, business plans, designs, marketing or other business strategies, compensation paid to employees or other terms of employment, or deliver to any person, firm, corporation or other entity any document, record, notebook, computer program or similar repository of or containing any such confidential or proprietary information or trade secrets. The Company and the Executive stipulate and agree that as between them the foregoing matters are important, material and confidential proprietary information and trade secrets and affect the successful conduct of the businesses of the Company (and any successor or assignee of the Company). Upon termination of the Executive's employment with the Company for any reason, the Executive shall promptly deliver to the Company all correspondence, drawings, manuals, letters, notes, notebooks, reports, programs, plans, proposals, financial documents, or any other documents concerning the Company's customers, business plans, designs, marketing or other business strategies, products or processes, provided that the Executive may retain his rolodex, address book and similar information, whether or not the Company specifically requests it. Notwithstanding the foregoing, the Parties acknowledge that the confidential information covered by this paragraph shall not include any such information which Executive can establish (i) was publicly known prior to the time of disclosure by the Company to Executive; (ii) becomes publicly known after disclosure by the Company to Executive through no wrongful action or omission by Executive; or (iii) is in Executive's rightful

possession, without confidentiality obligations, at the time of disclosure by the Company as shown by Executive's then-contemporaneous written records. Executive understands that nothing herein is intended to limit Executive's ability to discuss or disclose conduct, or the existence (but not the amount) of a settlement involving conduct, that Executive reasonably believes under Washington state, federal or common law to be illegal discrimination, illegal harassment, illegal retaliation, a wage and hour violation, or sexual assault, or conduct that is recognized as against a clear mandate of public policy, and Executive understands that information concerning any of the foregoing does not constitute confidential or proprietary information hereunder. Additionally, Executive understands that information regarding working conditions, wages, benefits, and/or other terms and conditions of employment does not constitute confidential or proprietary information hereunder to the extent disclosure of such information is protected by applicable law.

**(d) Non-Disparagement.** The Executive and the Company mutually agree not to disparage or defame, in writing or orally, the other party, and as applicable, its or his services, products, subsidiaries and affiliates, and/or their respective directors, officers, and successors and assigns. This non-disparagement provision shall not apply to statements made by non-management employees of the Company, so long as such statements did not originate from and were not induced or encouraged (directly or indirectly) by an officer, director or management employee of the Company. Notwithstanding the foregoing, nothing in this Section 7(d) shall limit the ability of the Company or the Executive, as applicable, to provide truthful testimony as required by law or any judicial or administrative process.

**(e) Remedies.** Without limiting the right of the Employer to pursue all other legal and equitable rights available to the Employer for violation of the provisions of Section 7 of this Agreement by Executive, it is agreed that (a) other remedies cannot fully compensate the Employer for such a violation, (b) such a violation will cause the Employer irreparable harm which may not be adequately compensated by money damages and (c) the Employer shall each be entitled to a temporary, preliminary and permanent injunctive or other equitable relief, without or posting a bond therefore, to prevent a violation, continuing violation or threatened violation of the provisions of Section 7 of this Agreement.

## **8. Inventions and Patents.**

**(a)** For purposes of this Agreement, "Inventions" includes, without limitation, information, inventions, contributions, improvements, ideas, or discoveries, whether protectable or not, and whether or not conceived or made during work hours. Subject to Section 8(d) below, Executive agrees that all Inventions conceived or made by Executive during the period of employment with Employer belong to Employer, provided they grow out of Executive's work with Employer or are related in some manner to the Company Business, including, without limitation, research and product development, and projected business of Employer or its affiliated companies. Accordingly, Executive will:

- (i)** Make adequate written records of such Inventions, which records will be Employer's property;
- (ii)** Assign (and hereby does irrevocably assign and transfer) to Employer or its designee, at Employer's request, any rights, title and interest Executive may have to such Inventions for the U.S. and all foreign countries;
- (iii)** Waive and agree not to assert any moral rights Executive may have or acquire in any Inventions and agree to provide written waivers from time to time as requested by Employer; and
- (iv)** Assist Employer (at Employer's expense) in obtaining and maintaining patents or copyright registrations with respect to such Inventions.

**(b)** Executive understands and agrees that Employer or its designee will determine, in its sole and absolute discretion, whether an application for patent will be filed on any Invention that is the exclusive property of Employer, as set forth above, and whether such an application will be abandoned prior to issuance of a patent. Employer will pay to Executive, either during or after the term of this Agreement, the following amounts if Executive is sole inventor, or Executive's proportionate share if Executive is joint inventor: \$750 upon filing of the initial application for patent on such Invention; and \$1,500 upon issuance of a patent resulting from such initial patent application, provided Executive is named as an inventor in the patent.

**(c)** Executive further agrees that Executive will promptly disclose in writing to Employer during the term of Executive's employment, all Inventions whether developed by Executive alone or jointly with others (whether or not Employer

has rights in such Inventions) so that Executive's rights and Employer's rights in such Inventions can be determined. Except as set forth on the initialed Exhibit B (List of Inventions) to this Agreement, if any, Executive represents and warrants that Executive has no Inventions, software, writings or other works of authorship useful to Employer in the normal course of the Company Business, which were conceived, made or written prior to the date of this Agreement and which are excluded from the operation of this Agreement.

**(d) NOTICE:** In accordance with Washington law, this Section 8 does not apply to Inventions for which no equipment, supplies, facility, or trade secret information of Employer was used and which was developed entirely on Executive's own time, unless: (a) the Invention relates (i) directly to the business of Employer or (ii) to Employer's actual or demonstrably anticipated research or development, or (b) the Invention results from any work performed by Executive for Employer.

#### **9. Successors.**

**(a) Employer's Successors.** This Agreement shall be binding upon any successor (whether direct or indirect and whether by purchase, lease, merger, consolidation, liquidation or otherwise) to all or substantially all of the Employer's business and/or assets. For all purposes under this Agreement, the term "Employer" shall include any successor to the Employer's business and/or assets which becomes bound by this Agreement.

**(b) Employee's Successors.** This Agreement and all rights of the Executive hereunder shall inure to the benefit of, and be enforceable by, the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

#### **10. Section 409A of the Internal Revenue Code.**

In the event that the Employer determines that any of the benefits payable under this Agreement would violate Section 409A, then the Employer and the Executive shall, in good faith, agree to implement adjustments needed to comply with Section 409A. Additionally, notwithstanding anything contained in this Agreement to the contrary, if Executive is deemed by the Employer at the time of Executive's "separation from service" to be a "specified employee," each within the meaning of Section 409A, any compensation or benefits to which Executive becomes entitled under this Agreement (or any agreement or plan referenced in this Agreement) in connection with such separation that are subject to Section 409A shall not be made or commence until the date which is six (6) months after Executive's "separation from service" (or, if earlier, Executive's death). Such deferral shall only be effected to the extent required to avoid adverse tax treatment to Executive, including (without limitation) the additional twenty percent (20%) tax for which Executive would otherwise be liable under Section 409A(a)(1)(B) in the absence of such deferral. Upon the expiration of the applicable deferral period, any compensation or benefits which would have otherwise been paid during that period (whether in a single lump sum or in installments) in the absence of this Section 10 shall be paid to Executive or Executive's beneficiary in one lump sum. To the extent that any provision of this Agreement is ambiguous as to its exemption or compliance with Section 409A, the provision will be read in such a manner so that such payments hereunder are exempt from Section 409A to the maximum permissible extent, and for any payments where such construction is not tenable, that those payments comply with Section 409A to the maximum permissible extent. To the extent any nonqualified deferred compensation subject to Section 409A payable to Executive hereunder could be paid in one or more taxable years depending upon Executive completing certain employment-related actions (such as resigning after a failure to cure a Good Reason event and/or returning an effective release), then any such payments will commence or occur in the later taxable year to the extent required by Section 409A. Each payment and benefit payable under this Agreement is intended to constitute a separate payment for purposes of Section 1.409A-2(b)(2) of the U.S. Treasury Regulations.

#### **11. Repayment Provisions.**

If the Company is required to prepare an accounting restatement due to its material noncompliance, as a result of the Executive's misconduct, with any financial reporting requirement under United States securities laws, then, and only if Section 304 of the Sarbanes-Oxley Act of 2002, or a successor provision, is then in effect, the Company may require the Executive to reimburse the Employer for (i) any bonus or other incentive-based or equity-based compensation received by the Executive from the Employer during the 12-month period following the first public issuance or filing with the Securities Exchange Commission (whichever first occurs) of the financial documents embodying such financial reporting requirement and (ii) any profits realized from the sale of securities of Company during such 12-month period.

**12. Miscellaneous Provisions.**

**(a). Notice.** Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered, when mailed by overnight courier, U.S. registered or certified mail, return receipt requested and postage prepaid, or when sent by email (provided such email is not returned as undelivered). In the case of the Executive, mailed notices shall be addressed to him at the home address that he most recently communicated to the Employer in writing or the personal email address most recently communicated to the Employer in writing. In the case of the Employer, mailed notices shall be addressed to:

Attention: Chief Executive Officer  
c/o: 22722 29<sup>th</sup> Drive SE, Suite 100,  
Bothell, Washington 98021  
Telephone:  
Facsimile:  
Email:

**(b). Modifications and Waivers.** No provision of this Agreement shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by the Executive and by an authorized officer of the Employer (other than the Executive). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

**(c). Whole Agreement.** Except for those agreements or plans referenced herein (including without limitation any employee benefit plans of the Company in which the Executive is a participant in as of the Effective Date and the Indemnification Agreement), this Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes any other agreements, representations or understandings (whether oral or written and whether express or implied) with respect to the subject matter hereof. In the event of any conflict in terms between this Agreement and any other agreement executed by and between the Executive and the Employer, the terms of this Agreement shall prevail and govern.

**(d). Withholding Taxes.** All payments made under this Agreement shall be subject to reduction to reflect taxes or other charges required to be withheld by law.

**(e). Choice of Law.** The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Kansas (except their provisions governing the choice of law).

**(f). Severability; Blue-Penciling.** The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision hereof, which shall remain in full force and effect. Furthermore, it is the intent, agreement and understanding of each party hereto that if, in any action before any court or agency legally empowered to enforce this Agreement, any term, restriction, covenant or promise in this Agreement is found to be unreasonable and for that or any other reason unenforceable, then such term, restriction, covenant or promise shall be deemed modified to the minimum extent necessary to make it enforceable by such court or agency; provided further that any such court or agency shall have the power to modify such provision, to the extent necessary to make it enforceable (for the maximum duration and geographic scope permissible), and such provision as so modified shall be enforced.

**(g). Protected Activity.** Executive understands that nothing in this Agreement limits or prohibits Executive from filing a charge or complaint with, or otherwise communicating or cooperating with or participating in any investigation or

proceeding that may be conducted by, any federal, state or local government agency or commission, including the Securities and Exchange Commission, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, and the National Labor Relations Board (“Government Agencies”), including disclosing documents or other information as permitted by law.

**(h) Assignment.** The Employer may assign its rights under this Agreement to any entity that expressly in writing assumes the Employer’s obligations hereunder in connection with any sale or transfer of all or substantially all of the Company’s assets to such entity.

**(i) Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ACHIEVE LIFE SCIENCES, INC.

By: /s/ Richard Stewart

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Name: Richard Stewart

Title: Chief Executive Officer

THOMAS B. KING

Signed: /s/ Thomas B. King

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EXHIBIT A

Outside Activities

EXHIBIT B

List of Inventions



**Certification Pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934**

I, Richard Stewart, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Achieve Life Sciences, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2024

/s/ Richard Stewart  
Richard Stewart  
Chief Executive Officer (Principal Executive and Financial Officer)

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**Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

I, Richard Stewart, Chief Executive Officer and Principal Executive and Financial Officer of Achieve Life Sciences, Inc. (the "Company"), certify, pursuant to Rule 13a-14(b) or Rule 15d-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350, that:

(1) the Quarterly Report on Form 10-Q of the Company for the three and nine months ended September 30, 2024 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 780(d)); and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 7, 2024

/s/ Richard Stewart

Richard Stewart

Chief Executive Officer (Principal Executive and Financial Officer)

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