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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): December 30, 2019

XBIOTECH INC.
(Exact name of Registrant as specified in its charter)

British Columbia, Canada
(State of Incorporation)

001-37347
(Commission File Number)

N/A
(I.R.S. Employer Identification No.)

5217 Winnebago Lane
Austin, TX **78744**
(Address of principal executive offices) (Zip Code)

(512) 386-2900
(Registrant's telephone number, including area code)

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, no par value	XBIT	NASDAQ Global Select Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter) Emerging growth company ☒

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

Item 1.01 Entry into a Material Definitive Agreement.

Background

As previously disclosed, on December 7, 2019, XBiotech Inc. (the "Company") entered into an Asset Purchase Agreement (the "Purchase Agreement") with Janssen Biotech, Inc. ("Janssen"). The closing of the transactions contemplated by the Purchase Agreement (the "Closing") occurred on December 30, 2019 (the "Closing Date"), as further described under Item 2.01 below.

IP Non-Assertion and License Agreement

At the Closing, the Company and Janssen entered into an IP Non-Assertion and License Agreement (the "License Agreement"), pursuant to which the Company has granted Janssen a non-exclusive license to certain patents and intellectual property of the Company. Janssen has agreed not to assert certain claims from the patents to be acquired from the Company in the transaction against the Company in connection with the Company's new antibodies targeting IL-1α, as described in the Purchase Agreement, to treat non-dermatological diseases.

Clinical Manufacturing Agreement

In addition, at the Closing, XBiotech USA, Inc., a subsidiary of the Company ("XBiotech USA"), and Janssen Research & Development, LLC ("JRD") entered into a Clinical Manufacturing Agreement (the "Manufacturing Agreement"). Pursuant to the Manufacturing Agreement, XBiotech USA has agreed to manufacture bermekimab for use by Janssen in clinical trials, in exchange for payments, paid in quarterly installments.

Transition Services Agreement

Finally, at the Closing, XBiotech USA and JRD entered into a Transition Services Agreement (the "Services Agreement"). Pursuant to the Services Agreement, XBiotech USA has agreed to continue operational management, on a fee-for-service basis, of certain ongoing clinical trials related to bermekimab.

The foregoing descriptions do not purport to be complete and are qualified in their entirety by reference to the terms of the License Agreement, the Manufacturing Agreement and the Services Agreement, which are filed as Exhibits 10.1, 10.2 and 10.3 hereto, respectively, and incorporated by reference herein.

Item 2.01 Completion of Acquisition or Disposition of Assets.

Asset Purchase Agreement

On the Closing Date, and pursuant to the Purchase Agreement described under Item 1.01 above, the Company completed the disposition of the Company's True Human Antibody bermekimab to target interleukin-1 alpha (IL-1α) to Janssen in return for a $750 million cash payment, $75 million of which will be held in an escrow account for 18 months to satisfy any indemnity claims. The Company plans to use the proceeds to fund discovery and development of its next generation True Human anti-IL-1α antibody program and to advance other antibody therapeutics in the Company's pipeline. The Company will also have sufficient cash to support a significant capital transaction, such as a stock repurchase or tender offer. Any such transaction would be subject to board review and approval based upon, among other things, the assessment by the board (or a committee of the board) of the Company's business and cash requirements, market conditions and a review of potential alternatives. The Company expects the board (or a committee of the board) to commence such review and assessment in the near future.

In addition, the Company will be eligible to receive milestone payments of $150 million each if Janssen, in its sole and absolute discretion, develops pharmaceutical products that contain bermekimab and that are for non-dermatological indications, provided that Janssen receives certain required commercial authorizations for such products within a specified timeframe. The Company will be entitled to earn up to four milestone payments, for a maximum of $600 million.

The foregoing description of the Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the terms of the Purchase Agreement, which is filed as Exhibit 2.1 hereto and incorporated by reference herein.

Item 7.01 Regulation FD Disclosure.

On December 30, 2019, the Company issued a press release announcing the closing of the transactions contemplated by the Purchase Agreement. A copy of the press release issued in connection with the announcement is filed as Exhibit 99.1 to this Current Report on Form 8-K.

The information furnished in Item 7.01 and Exhibit 99.1 shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference into any other filing under the Securities Act of 1933 or the Exchange Act, except as expressly set forth by specific reference in such a filing.

Item 9.01 Financial Statements and Exhibits.

(b) Pro Forma Financial Information.

The Company's unaudited pro forma consolidated financial information giving effect to the disposition of bermekimab pursuant to the Purchase Agreement is attached hereto as Exhibit 99.2 and incorporated herein by reference.

The unaudited pro forma condensed consolidated financial information should be read in conjunction with the historical financial statements and related notes of the Company. The unaudited pro forma condensed consolidated financial information is provided for informational purposes only and is not necessarily indicative of the results that would have occurred if the sale of bermekimab had occurred on the date indicated or the expected financial position or results of operations in the future. The information includes pro forma adjustments which reflect the disposition of bermekimab.

The unaudited pro forma condensed consolidated balance sheet as of September 30, 2019 was prepared assuming the sale of bermekimab occurred as of January 1, 2019.

The unaudited pro forma condensed consolidated statement of operations for the nine month period ended September 30, 2019 has been presented assuming the sale of bermekimab occurred as of January 1, 2019.

The unaudited pro forma condensed consolidated statement of operations for the fiscal year ended December 31, 2018, has been presented assuming the sale of bermekimab occurred as of January 1, 2018.

(d) Exhibits

Exhibit Number	Description
+2.1	Asset Purchase Agreement, dated as of December 7, 2019, between XBiotech Inc. and Janssen Biotech, Inc.
+10.1	IP Non-Assertion and License Agreement, dated as of December 30, 2019, between XBiotech Inc. and Janssen Biotech, Inc.
+10.2	Clinical Manufacturing Agreement, dated as of December 30, 2019, between XBiotech Inc. and Janssen Biotech, Inc.
+10.3	Transition Services Agreement, dated as of December 30, 2019, between XBiotech Inc. and Janssen Biotech, Inc.
99.1	Press Release of XBiotech Inc., issued December 30, 2019
99.2	Unaudited pro forma condensed consolidated financial information

+ Portions of this exhibit (indicated therein by asterisks) have been omitted for confidential treatment.

SIGNATURE

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 hereunto duly authorized.

Date: December 30, 2019

XBIOTECH INC.

By: /s/John Simard
John Simard
Chief Executive Officer and President

EXHIBIT 2.1

EXECUTION VERSION

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

ASSET PURCHASE AGREEMENT

Dated as of December 7, 2019

between

JANSSEN BIOTECH, INC.

and

XBIOTECH INC.

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") dated as of December 7, 2019 is entered into between Janssen Biotech, Inc., a Pennsylvania corporation ("Buyer"), and XBiotech Inc., a corporation existing under the laws of the Province of British Columbia ("Seller"). Buyer and Seller are sometimes individually referred to herein as a "Party" and are sometimes collectively referred to herein as the "Parties". Certain capitalized terms used herein have the meanings ascribed to them in Section 1.1.

RECITALS

WHEREAS, Seller desires to sell all of Seller's and its Affiliates' right, title and interest in, to and under the Purchased Assets and transfer the Assumed Liabilities to Buyer, and Buyer wishes to purchase from Seller all of Seller's and its Affiliates' right, title and interest in, to and under the Purchased Assets and to assume the Assumed Liabilities, upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual benefits to be derived from this Agreement, and of the representations, warranties, conditions, agreements and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I

DEFINITIONS; INTERPRETATION

Section 1.1. Definitions. For purposes of this Agreement, the following terms shall have the corresponding meanings set forth below:

"Accounts Payable" means all trade accounts payable, regardless of when asserted, billed or imposed, of Seller or its Affiliates.

"Act" means the United States Federal Food, Drug, and Cosmetic Act, as amended, and the rules, regulations, requirements, written advisory comments and any formal guidance promulgated thereunder.

"Action" means any claim, action, suit, arbitration, inquiry, audit, proceeding or investigation.

"Affiliate" of any Person means another Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with, such first Person.

"Agreement" has the meaning set forth in the preamble hereof.

"Assumed Contracts" has the meaning set forth in Section 2.2(a)(vi).

"Assumed Liabilities" means (i) the Liabilities under the Assumed Contracts accruing with respect to the period commencing after the later of the Closing and the applicable Transfer Date (but, for the avoidance of doubt, excluding any Liability arising from or relating to the performance or non-performance thereof on or prior to the later of the Closing and the applicable Transfer Date), (ii) any Assumed Taxes, (iii) any Liabilities arising out of, relating to or resulting from the employment or termination of employment of any Transferred Business Employee after the applicable Transfer Time, (iv) any Liabilities arising out of, relating to or resulting from clinical trials for atopic dermatitis or hidradenitis suppurativa indications accruing on or after the Closing Date and (v) all other Liabilities arising out of, relating to or resulting from Buyer's ownership or operation of the Business on or after the Closing Date.

"Assumed Taxes" means any Taxes arising out of, or with respect to, the Purchased Assets for any Post-Closing Tax Period.

"Bill of Sale, Assignment and Assumption Agreement" has the meaning set forth in Section 2.4(b)(i).

"Biological Materials" means (i) any tissues, cells, cell lines, organisms, blood samples, genetic material, antibodies and other biological substances and materials (including an aliquot of the plasmid DNA used at cell line transfection) and any Research Tools and (ii) any biological products, as such term is defined in Section 351 of the PHS Act, in each case that are owned or otherwise Controlled by Seller or any of its Affiliates on the Closing Date and that are primarily related to the Business or otherwise reasonably necessary to conduct the Business as conducted during the Reference Period. For the avoidance of doubt, references to "Biological Materials" shall be deemed to include all materials of the type referred to in clause (i) or (ii) above that are reasonably necessary to conduct the Business that are not readily available from commercial sources.

"Books and Records" means all books, records, files, documents and Tax Returns to the extent related to the Compound or any Product or the Exploitation thereof, any other Purchased Assets, or the Compound Program (including Regulatory Documentation, research and development records (including reports detailing the history of the applicable host CHO cell line, creation of the plasmid DNA construct, generation of the manufacturing cell line, measures taken to assure monoclonality, MCB/WCB testing and results, any genetic characterization studies performed and the full nucleotide sequence of applicable plasmid DNA (gb file)), correspondence and, to the extent not originals, copies of all files relating to the filing, prosecution, issuance, maintenance, enforcement or defense of any Intellectual Property Rights, including any written correspondence with any Third Party, records and documents related to research and pre-clinical and clinical testing and studies relating to the Compound or any Product or the Exploitation thereof conducted by or on behalf of Seller or any of its Affiliates or the Compound Program, including any laboratory and engineering notebooks and manufacturing records, procedures, tests, dosage, criteria for patient selection, study protocols and investigators' brochures) in all forms in which they are stored or maintained (whether electronic or otherwise), and all data (including Data) and information included or referenced in any of the foregoing, in each case that are owned or otherwise Controlled by or in the possession of Seller or any of its Affiliates.

"Business" means the Compound Program and the Purchased Assets, including the Compound and all Products and the potential Exploitation thereof.

"Business Day" means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions located in New York City are permitted or required by applicable Law to remain closed.

"Business Employee" means each employee of Seller and its Affiliates who is set forth on Schedule 1.1(a), which Schedule 1.1(a) shall be updated by Seller prior to the Closing to reflect any employment terminations or other changes in status; provided that, if (a) the employment of any individual listed on Schedule 1.1(a) is terminated prior to the Closing Date, (b) any such individual rejects an offer of employment pursuant to Section 5.10 or (c) any such individual is no longer an active employee as of the Closing Date, then if Buyer so elects, Seller and Buyer shall reasonably cooperate to mutually agree on another employee of Seller and its Affiliates who is sufficiently knowledgeable regarding the Compound Program, including the Compound and all Products and the potential Exploitation thereof, to replace such individual, and Schedule 1.1(a) and Schedule 3.10(h) shall be updated to include such employee; and provided further that Schedule 1.1(a) shall be comprised of no more than ten Business Employees.

"Business Employee Benefit Plan" means any (a) "employee benefit plan" as defined in Section 3(3) of ERISA, whether or not subject to ERISA, or (b) employment agreement, offer letter, severance arrangement, change in control arrangement, retention agreement or plan, deferred compensation arrangement, sales commission plan or program or other compensatory or benefit plan, agreement, program, policy or arrangement, in each case that is sponsored, maintained or contributed to by Seller or any of its Affiliates for the benefit of a Business Employee.

"Buyer" has the meaning set forth in the preamble hereof.

"Buyer Indemnified Party" has the meaning set forth in Section 7.1(a).

"Cap" has the meaning set forth in Section 7.3(b).

"Clinical Manufacturing Agreement" has the meaning set forth in Section 2.4(b)(v);

"Closing" has the meaning set forth in Section 2.4(a).

"Closing Date" has the meaning set forth in Section 2.4(a).

"Code" means the Internal Revenue Code of 1986, as amended.

"Compound" means the monoclonal antibody known as bermekimab (MABp1), the sequence of which is set forth in Schedule 1.1(b).

"Compound Program" means the program of research and development carried out on or prior to the Closing Date utilizing the Compound in research and/or discovery efforts or the Exploitation of the Compound.

"Confidentiality Agreement" means the letter agreement, dated as of January 5, 2019, between Janssen Research & Development, LLC and Seller.

"Contemplated Transactions" means the transactions contemplated by this Agreement and any Related Document.

"Contracts" means any loan or credit agreement, bond, debenture, note, mortgage, indenture, lease, supply agreement, license agreement, development agreement, distribution agreement, contract research organization agreement or other legally binding contract, agreement, obligation, commitment, arrangement, understanding or instrument, whether oral or written.

"Control" including its various tenses and derivatives (such as "Controlled" and "Controlling") means (a) when used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by Contract or otherwise, (b) when used with respect to any security, the possession, directly or indirectly, of the power to vote, or to direct the voting of, such security or the power to dispose of, or to direct the disposition of, such security and (c) when used with respect to any Intellectual Property Rights, possession of the right, whether directly or indirectly, and whether by ownership, license or otherwise, to assign or grant a license, sublicense or other right to or under such Intellectual Property Rights or to compel another to do so.

"Data" means all databases and data, including all compilations thereof, and all rights therein, owned or Controlled by Seller or any of its Affiliates that (i) were collected, compiled, generated or used in connection with the Compound Program on or prior to the Closing Date or (ii) otherwise are related to the Compound or any Product or the Exploitation thereof.

"Data Room" has the meaning set forth in Section 1.2.

"Dermatology" means the treatment of any disorder (i) set forth on Schedule 1.1(c), (ii) reviewed by or under the jurisdiction of the FDA's Division of Dermatology and Dental Products as of the date hereof or (iii) that is not reviewed by or under the jurisdiction of any division of the FDA as of the date hereof, but that subsequently becomes reviewed by or under the jurisdiction of the FDA's Division of Dermatology and Dental Products.

"Dollars" or "$" means United States dollars.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means, with respect to any entity, trade or business, any other entity, trade or business that is, or was at the relevant time, a member of a group described in

Section 414(b), (c), (m) or (o) of the Code or Section 4001(b)(1) of ERISA that includes or included the first entity, trade or business, or that is, or was at the relevant time, a member of the same "controlled group" as the first entity, trade or business pursuant to Section 4001(a)(14) of ERISA.

"Escrow Agent" has the meaning set forth in Section 2.7(a).

"Escrow Agreement" has the meaning set forth in Section 2.4(b)(ii).

"Escrow Amount" has the meaning set forth in Section 2.1(b)(i).

"Escrow Consideration" has the meaning set forth in Section 2.7(a).

"Escrow Fund" has the meaning set forth in Section 2.7(a).

"Escrow Termination Date" has the meaning set forth in Section 2.7(b).

"**[*****]** Countries" means the **[*****]** and **[*****]**.

"Excluded Assets" has the meaning set forth in Section 2.2(b).

"Excluded Contracts" shall mean the Contracts set forth on Schedule 3.6(a).

"Excluded Liabilities" has the meaning set forth in Section 2.3(b).

"Excluded Taxes" means (i) any Taxes arising out of, or with respect to, the Purchased Assets for any Pre-Closing Tax Period, (ii) any Taxes of Seller or any of its Affiliates for any taxable period and (iii) any Transfer Taxes that are allocated to Seller pursuant to Section 5.8(a).

"Existing Antibody" has the meaning set forth in Section 3.5(i).

"Exploit" means to make, have made, import, use, sell, offer for sale, or otherwise dispose of, including to research, develop, register, modify, enhance, improve, manufacture, have manufactured, store, formulate, optimize, export, transport, distribute, commercialize, promote, market, have sold or otherwise dispose of. "Exploiting", "Exploitation" and other forms of the word "Exploit" shall have correlative meanings.

"FCPA" has the meaning set forth in Section 3.18(a).

"FDA" has the meaning set forth in Section 3.11(b).

"GAAP" means the United States generally accepted accounting principles in effect from time to time.

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

"Governmental Authority" means any Federal, state, local or foreign government, any court, tribunal, administrative, regulatory or other governmental agency, department, commission or authority or any non-governmental self-regulatory agency, commission or authority.

"IND" means (i) any investigational new drug application relating to a Product filed with the FDA pursuant to 21 C.F.R. Part 312, or any comparable filing made with a Governmental Authority in another country (including the submission to a competent authority of a request for an authorization concerning a clinical trial, as envisaged in Article 9, paragraph 2, of European Directive 2001/20/EC, or any other exemption legitimizing the use of the Product in a clinical investigation), and (ii) all supplements and amendments that may be filed with respect to the foregoing.

"Indemnified Party" has the meaning set forth in Section 7.4(a).

"Indemnifying Party" has the meaning set forth in Section 7.4(a).

"Indemnity Threshold" has the meaning set forth in Section 7.3(a)(i).

"Intellectual Property Rights" means any (a) patents, patent applications, (including in each case any continuation, continuation-in-part, division, renewal, patent term, extension (including any supplemental protection certificate), reexamination or reissue thereof) (collectively, "Patents"); (b) registered and unregistered trademarks, trade dress, trade names, logos, design rights, service marks, together with the goodwill pertaining to the foregoing, and all applications, registrations and renewals therefor (collectively, "Trademarks"); (c) registered and unregistered copyrights, works of authorship, copyrightable works (published or unpublished) and all applications, registrations and renewals therefor (collectively, "Copyrights"); (d) domain names; (e) software, computer programs and applications (whether in source code, object code or other form) algorithms, databases, documentation and technology supporting the foregoing (excluding off the shelf software) (collectively, "Software"); and (f) trade secrets ("Trade Secrets"), know-how (including all ideas, concepts, research and development, composition information and embodiments, manufacturing and production processes, techniques and information, specifications, technical and business data, Data, designs, drawings, suppliers lists, pricing and cost information, and data and know-how embodied in business and marketing plans and proposals), other proprietary information and other proprietary intellectual property rights, and all copies and tangible embodiments of the foregoing in whatever form or medium.

"Inventory" means, with respect to or to the extent used in the Compound or any Product, all inventory of active pharmaceutical ingredient, intermediates, specific raw materials, components and consumables and finished product forms, together with all work-in-progress, packaging materials and any materials that were subject to testing and required preservation, owned by Seller or any of its Affiliates.

"IP License Agreement" has the meaning set forth in Section 2.4(b)(ix).

"IRS" means the United States Internal Revenue Service.

"Law" means any federal, state, local or foreign constitution, treaty, law, statute, ordinance, rule or regulation (including any written advisory comments or formal interpretation, guidance, directive or policy thereunder), order, writ, award, decree, injunction, judgment, stay or restraining order of any Governmental Authority, the terms of any permit, and any other ruling or decision of, agreement with or by, or any other requirement of, any Governmental Authority.

"Liabilities" means any liabilities, obligations and commitments, whether accrued or fixed, absolute or contingent, known or unknown, determined or determinable, due or to become due, or otherwise.

"License to Occupy" has the meaning set forth in Section 2.4(b)(vi);

"Lien" means any lien (statutory or otherwise), security interest, pledge, hypothecation, mortgage, assessment, lease, claim, levy, license, defect in title, charge, or any other Third Party right, license or property interest of any kind, or any conditional sale or other title retention agreement, right of first option, right of first refusal or similar restriction, any covenant not to sue, or any restriction on use, transfer, receipt of income or exercise of any other attribute of ownership or any agreement to give any of the foregoing in the future or similar encumbrance of any kind or nature whatsoever.

"Losses" has the meaning set forth in Section 7.1(a).

"MAA" means a New Drug Application or Biologics License Application, each as defined in the Act, and any corresponding foreign application, registration or certification, necessary to commercialize and market, or primarily related to the commercialization and marketing of, a Product in a particular country or group of countries, but not including pricing and reimbursement approvals.

"Material Adverse Effect" means any change, effect, event, occurrence, state of facts or development which individually or in the aggregate would reasonably be expected to result in, or has resulted in, any change or effect, that (a) is materially adverse to the Business; (b) would reasonably be expected to prevent or materially impede, materially interfere with, materially hinder or materially delay the consummation of the Contemplated Transactions or (c) would reasonably be expected to create or impose a material limitation on the ability of Buyer to acquire valid and marketable title to the Purchased Assets free and clear of all Liens or to freely Exploit the Purchased Assets; provided that, for purposes of clause (a), none of the following shall be deemed, either alone or in combination, to constitute, and none of the following shall be taken into account in determining whether there has been or will be, a Material Adverse Effect: (i) any change, effect, event, occurrence, state of facts or development relating to the economy in general in the United States or in any other jurisdiction in which the Seller has operations or conducts business, including any changes in financial, banking or securities markets in general, any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates, so long as the effects do not disproportionately impact the Business, (ii) any change, effect, event, occurrence, state of facts or development reasonably attributable to conditions affecting the pharmaceutical industry, so long as the effects do not disproportionately impact the Business, (iii) the public announcement of this Agreement and the Contemplated Transactions, (iv) earthquakes, hurricanes, tornadoes, natural disasters or global, national or regional political conditions, including hostilities, military actions, political instability, acts of terrorism or war or any escalation or material worsening of any such hostilities, military actions, political instability, acts of terrorism or war existing or underway as of the date hereof (other than any of the foregoing that causes any material damage or destruction to or renders unusable any material Purchased Assets and so long as the effects do not disproportionately impact the Business), (v) any effect that results from any action taken at the express prior written request of Buyer or with Buyer's prior written consent or (vi) changes in Law or GAAP or any interpretation thereof, so long as the effects do not disproportionately impact the Business.

"Milestone Payment" has the meaning set forth in Section 2.5(a).

"Negotiation Notice" has the meaning set forth in Section 5.6(c)(iii).

"Negotiation Period" has the meaning set forth in Section 5.6(c)(iii).

"New Antibody" has the meaning set forth in Section 5.6(b).

"New Antibody Product" has the meaning set forth in Section 5.6(c).

"Non-Assignable Right" has the meaning set forth in Section 2.6.

"Non-Dermatological Indication" means any disorder that is not included in clauses (i), (ii) or (iii) of the definition of Dermatology.

"Offer Notice" has the meaning set forth in Section 5.6(c)(i).

"Offer Period" has the meaning set forth in Section 5.6(c)(ii).

"Order" means any writ, judgment, decree, injunction or similar order, including consent orders, of any Governmental Authority (in each such case whether preliminary or final).

"Outstanding Claim Reserve" has the meaning set forth in Section 2.7(c).

"Parent" has the meaning set forth in Section 5.10(b).

"Party" or "Parties" has the meaning set forth in the preamble hereof.

"Patent Assignment Agreement" has the meaning set forth in Section 2.4(b)(iii).

"Permits" means all approvals, authorizations, certificates, filings, franchises, licenses, notices, clearances and permits of or with all Governmental Authorities, including all applications for any of the foregoing, together with any renewals, extensions or modifications thereof and additions thereto.

"Permitted Liens" means, collectively, (i) statutory liens for Taxes, assessments and governmental charges not yet due and payable or that are being contested in good faith by appropriate proceedings and for which appropriate reserves have been maintained in accordance with GAAP, (ii) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, material men and other Liens imposed by law arising or incurred in the ordinary course of business for amounts that are not yet due and payable and, if required under GAAP, for which appropriate reserves have been created or that are being contested in good faith by appropriate proceedings and that are not resulting from any breach, violation or default by Seller or any of its Affiliates of any Contract or applicable Law and (iii) other imperfections of title or Liens, if any, that, individually or in the aggregate, are not material to the Business or the Purchased Assets.

"Person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity or any Governmental Authority.

"PHS Act" means the means the United States Public Health Service Act, as amended, and the rules, regulations, requirements, written advisory comments and formal guidance promulgated thereunder, as may be in effect from time to time.

"Post-Closing Tax Period" means any Tax period (or portion thereof) beginning after the Closing Date.

"Pre-Closing Tax Period" means any Tax period (or portion thereof) ending on or before the Closing Date.

"Product" means any pharmaceutical product containing the Compound, including all dosage forms, presentations, formulations and line extensions thereof, including a pharmaceutical product which is comprised of the Compound and other pharmaceutically active compound(s) and/or ingredients, any prototypes thereof and any variations thereof.

"Public Official" has the meaning set forth in Section 3.18(c).

"Purchase Price" means an amount equal to $750,000,000.00.

"Purchased Assets" has the meaning set forth in Section 2.2(a).

"Quality Assurance Agreement" has the meaning set forth in Section 5.16(a).

"Reference Period" means the 18 month period ending on and including the Closing Date.

"Regulatory Application" means an application submitted to a Governmental Authority that issues Regulatory Authorizations.

"Regulatory Authorizations" means, with respect to any jurisdiction, any and all approvals (including pricing and reimbursement approvals), licenses, clearances, registrations or authorizations of any Governmental Authority necessary for or primarily related to the investigation, development, manufacture, sale or marketing of any pharmaceutical compound or (bio)pharmaceutical product in such jurisdiction, including, where applicable, (i) INDs, MAAs and supplements and amendments thereto, (ii) pre- and post-approval marketing authorizations (including any prerequisite manufacturing approval or authorization related thereto) and (iii) labeling approval.

"Regulatory Documentation" means any and all (i) applications, registrations, licenses, authorizations and approvals (including all Regulatory Authorizations), and non-clinical and clinical study authorization applications or notifications (including all supporting files, writings, data, studies and reports) submitted to a Governmental Authority or institutional review board or research ethics committee, as applicable, with a view to the obtaining or maintaining of any Regulatory Authorization, including any Investigational Medicinal Product Dossier (IMPD), (ii) correspondence to or with the FDA, EMA or any other Governmental Authority (including minutes and official contact reports relating to any communications with any Governmental Authority), (iii) pharmacovigilance databases, adverse event reports and associated documents, investigations of adverse event reports, and any other records related to safety reporting, (iv) manufacturing records and (v) nonclinical, clinical and other data contained or referenced in or supporting any of the foregoing.

"Related Documents" means, other than this Agreement, all agreements, certificates and documents signed and delivered by either Party in connection with this Agreement or the transactions contemplated hereby.

"Representatives" means, with respect to any Person, such Person's directors, officers, managers, employees, counsel, consultants, accountants, financial advisors, lenders and other agents and representatives.

"Required Commercialization Authorizations" means, with respect to any product, indication and country, all Regulatory Authorizations necessary to market and sell such product for such indication in such country (including all approvals or determinations by a Governmental Authority for the pricing or pricing reimbursement for such product, even if not legally required to sell such product in such country), as determined by Buyer in its reasonable discretion; provided, the term "sell" as used in this definition shall not include sales to Affiliates or sales associated with treatment IND, expanded use, compassionate use, early access or named patient programs.

"Research Tools" means cDNAs, antibodies, cell lines, knock-out animals, assays and other similar research tools.

"Restricted Actions" has the meaning set forth in Section 5.6(c).

"Restricted Period" has the meaning set forth in Section 5.6(a).

"Seller" has the meaning set forth in the preamble hereof.

"Seller Indemnified Party" has the meaning set forth in Section 7.2(a).

"Seller Intellectual Property" means (i) all Patents and Trademarks owned or Controlled by Seller or any of its Affiliates on the Closing Date that are set forth on Schedule 1.1(d) and (ii) all Trade Secrets and know-how owned or Controlled by Seller or any of its Affiliates on the Closing Date that are used exclusively in connection with the Business and, in each of cases (i) and (ii), the right to recover for past infringement of any of the foregoing.

"Seller Regulatory Authorizations" means any and all (i) Regulatory Authorizations and (ii) Regulatory Applications, in either case that are (a) owned or otherwise Controlled by Seller or any of its Affiliates on the Closing Date and (b) used primarily in connection with the Business.

"Seller Regulatory Documentation" means any and all Regulatory Documentation, including all Seller Regulatory Authorizations, that is owned by, or otherwise Controlled by or in the possession of, Seller or any of its Affiliates on the Closing Date and that (i) was acquired, collected, compiled, generated or used in connection with Business prior to the Closing Date or (ii) is otherwise used primarily in connection with the Business.

"Seller's Charter" has the meaning set forth in Section 3.1.

"Seller's Knowledge" (and similar phrases) means, with respect to any matter in question, (i) the actual knowledge of Seller's following officers: John Simard, Norma I. Gonzalez, Queena Han and Sushma Shivaswamy, after making due inquiry of their direct reports, and (ii) the actual knowledge of Stanley Kim.

"Social Security Act" has the meaning set forth in Section 3.11(f).

"Specified Indications" shall mean (i) Dermatology indications and (ii) any other indications that are deemed to be Specified Indications pursuant to Section 2.5(d).

"Specified Representations" has the meaning set forth in Section 7.3(a).

"Subsidiary" of any Person means another Person, an amount of the voting securities, other voting rights or voting partnership interests of which is sufficient to elect at least a majority of its board of directors or other governing body (or, if there are no such voting interests, 50% or more of the equity interests of which) is owned directly or indirectly by such first Person.

"Tax" or "Taxes" means (whether disputed or not) all (a) U.S., Canadian or other federal, state, provincial, local and foreign income, property, sales, use, excise, withholding, payroll, employment, social security, capital gain, alternative minimum, transfer and other taxes and similar governmental charges, in each case in the nature of a tax, including any interest, penalties and additions with respect thereto, (b) liability for the payment of any amounts of the type described in clause (a) as a result of being a member of an affiliated, consolidated, combined, unitary or aggregate group or as a transferee or successor and (c) liability for the payment of any amounts as a result of being party to any tax sharing agreement or as a result of any express or implied obligation to indemnify any other Person with respect to the payment of any amounts of the type described in clause (a) or (b).

"Tax Return" means all returns (including amended returns), requests for extensions of time, claims for refund, declarations of estimated Tax payments, reports, estimates, information returns and statements, including any related or supporting information with respect to any of the foregoing, filed or required to be filed with any Taxing Authority in connection with the determination, assessment, collection or administration of any Taxes.

"Taxing Authority" means any Governmental Authority or any quasi-governmental body exercising Tax regulatory authority.

"Third Party" means any Person other than: (a) Seller or Buyer or (b) any Affiliates of Seller or Buyer.

"Third Party Claim" has the meaning set forth in Section 7.4(a).

"Transfer Date" has the meaning set forth in Section 2.6.

"Transfer Taxes" has the meaning set forth in Section 5.8(a).

"Transfer Time" means 10:00 a.m., New York City time, on the Closing Date.

"Transferred Business Employee" has the meaning set forth in Section 5.10(a).

"Transition Services Agreement" has the meaning set forth in Section 2.4(b)(vii).

"XBiotech USA" has the meaning set forth in Section 2.4(b)(i).

Section 1.2. Interpretation. When a reference is made in this Agreement to an Article, a Section, Exhibit or Schedule, such reference shall be to an Article of, a Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement, any Related Document or in any Exhibit or Schedule hereto are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement, such Related Document or such Exhibit or Schedule. Whenever the words "include", "includes" or "including" are used in this Agreement or any Related Document, they shall be deemed to be followed by the words "without limitation". The word "or," when used in this Agreement, has the inclusive meaning represented by the phrase "and/or." The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to the "date hereof" refer to the date of this Agreement. "Extent" in the phrase "to the extent" means the degree to which a subject or other thing extends, and such phrase does not mean simply "if". For purposes of this Agreement and the Related Documents, the phrases "delivered or made available to Buyer prior to the date hereof", "delivered or made available to Buyer in the data room prior to the date hereof", "has made available to Buyer prior to the date hereof" or "has made available to Buyer in the data room prior to the date hereof" and similar expressions in respect of any document or information will be construed for all purposes of this Agreement and the Related Documents as meaning that a copy of such document or information was filed and made available for viewing by Buyer in the electronic data rooms hosted by Intralinks (the "Data Room") in each case no later than two Business Days prior to the date hereof. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any Contract or statute defined or referred to herein or in any Contract that is referred to herein means (a) in the case of any statute, such statute and any comparable statute that from time to time replaces such statute by succession and (b) in the case of any Contract, such Contract and all amendments, modifications and attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

ARTICLE II

PURCHASE AND SALE

Section 2.1. Purchase and Sale of Purchased Assets; Purchase Price.

(a) Pursuant to the terms and subject to the conditions of this Agreement, at the Closing, Seller shall, and shall cause each of its Affiliates owning or otherwise Controlling any of the Purchased Assets to, sell, convey, deliver, transfer and assign to Buyer (or its designated Affiliate), free and clear of all Liens, other than Permitted Liens, and Buyer (or its designated Affiliate) shall purchase, take delivery of and acquire from Seller (and its Affiliates) all of Seller's (and its Affiliates') right, title and interest in, to and under all of the Purchased Assets.

(b) In consideration of the sale, conveyance, delivery, transfer and assignment of the Purchased Assets to Buyer (or its designated Affiliate) and Seller's other covenants and obligations hereunder, upon the terms and subject to the conditions hereof:

(i) at the Closing, Buyer shall make the following payments: (1) to the Escrow Agent, by wire transfer of immediately available funds to the account designated by the Escrow Agent in writing as set forth in the Escrow Agreement, $75,000,000 (the "Escrow Amount"), and (2) to Seller (and/or to its designees), by wire transfer of immediately available funds to the account(s) set forth on Schedule 2.1(b)(i), the Purchase Price minus the Escrow Amount;

(ii) if and when payable pursuant to Section 2.5, Buyer shall make the Milestone Payments to Seller in accordance with Section 2.5; and

(iii) at the Closing, Buyer shall assume the Assumed Liabilities.

Section 2.2. Purchased Assets; Excluded Assets.

(a) The term "Purchased Assets" means all of Seller's (and its Affiliates') right, title and interest in, to and under the following properties and assets (tangible or intangible), other than the Excluded Assets:

(i) all Biological Materials;

(ii) all Seller Regulatory Documentation, including, for the avoidance of doubt, original and, if available, electronic copies;

(iii) all Seller Intellectual Property, including the registrations and applications set forth on Schedule 1.1(d);

(iv) all Books and Records, and all originals of any tangible embodiments of Seller Intellectual Property, including original files of any Patents included in the Seller Intellectual Property; provided, however, that Seller may retain a copy of any such Books and Records to the extent (A) necessary for Tax, regulatory compliance or accounting purposes, (B) necessary to comply with its obligations under any Related Documents, including the Clinical Manufacturing Agreement, but solely for the period required for such compliance, (C) such Books and Records relate to the Exploitation of any product that does not contain or comprise, and would not reasonably be expected to compete, directly or indirectly, with, a Compound, so long as redactions are made to exclude all Seller Intellectual Property and other information relating to the Compound or any Product or (D) such Books and Records do not primarily relate to the Business, so long as redactions are made to exclude all Seller Intellectual Property and other information relating to the Compound or any Product;

(v) the Contracts set forth on Schedule 2.2(a)(v) (including all agreements relating to clinical trials for the atopic dermatitis and hidradenitis suppurativa indications, collectively, the "Assumed Contracts"), including all rights thereunder;

(vi) all Permits necessary for or primarily related to the Business, including as set forth on Schedule 2.2(a)(vi);

(vii) all Actions, rights of recovery, and rights of indemnification or setoff against Third Parties and other claims arising out of or relating to the Business or the Assumed Liabilities that relate to the Business or the Assumed Liabilities, in each case subsisting on the Closing Date; and

(viii) all other properties, assets and rights (tangible or intangible) of Seller (and its Affiliates) reasonably necessary to conduct the Business as conducted during the Reference Period, other than any properties, assets or rights that are addressed by the subject matter of clauses (i) through (vii) of this Section 2.2(a) or clauses (i) through (vii) of Section 2.2(b).

(b) Buyer acknowledges that the Purchased Assets shall consist only of those assets described in Section 2.2(a) and all other assets of Seller and its Affiliates are excluded (collectively, the "Excluded Assets"). The Excluded Assets shall include:

(i) all cash and cash equivalents of Seller;

(ii) all Contracts other than the Assumed Contracts;

(iii) all rights and claims of Seller to the extent relating to any Excluded Asset or any Excluded Liability, and all Tax and other credits of Seller;

(iv) all land, buildings and improvements (and all furniture, fixtures and equipment thereon or therein) owned or leased by Seller;

(v) subject to the IP License Agreement, all Trade Secrets and know-how related to Seller's true human antibody discovery platform that do not constitute Seller Intellectual Property;

(vi) subject to the IP License Agreement and the Clinical Manufacturing Agreement, all Trade Secrets and know-how related to Seller's proprietary manufacturing technology that do not constitute Seller Intellectual Property;

(vii) subject to the Clinical Manufacturing Agreement, all Inventory; and

(viii) except to the extent included in the Purchased Assets, all other properties, assets, goodwill and rights of Seller of whatever kind and nature, real, personal or mixed, tangible or intangible.

Section 2.3. Assumed Liabilities; Excluded Liabilities.

(a) Pursuant to the terms and subject to the conditions of this Agreement, at the Closing, Seller shall, and shall cause its Affiliates to, sell, convey, deliver, transfer and assign to Buyer (or its designated Affiliate), and Buyer (or its designated Affiliate) shall assume from Seller and its applicable Affiliates the Assumed Liabilities.

(b) Notwithstanding anything in this Agreement or the Related Documents to the contrary, other than the Assumed Liabilities, Buyer shall not be the successor to Seller or any of its Affiliates, and Buyer expressly does not assume and shall not become liable to pay, perform or discharge, any Liability whatsoever of Seller or any of its Affiliates (including, for the avoidance of doubt, any Liability arising out of or otherwise relating in any way to the Purchased Assets), other than the Assumed Liabilities. All such Liabilities are referred to herein as the "Excluded Liabilities". Seller shall, or shall cause its Affiliates to, pay, perform and discharge when due all of the Excluded Liabilities. Without limitation of the foregoing, the Excluded Liabilities shall include the following Liabilities:

(i) any Liabilities relating to or arising out of the Excluded Assets;

(ii) any Liabilities relating to or arising out of Accounts Payable (other than the Assumed Liabilities);

(iii) any Excluded Taxes;

(iv) any Liabilities to present or former members or shareholders of Seller or any of its Affiliates;

(v) any Liabilities of Seller or any of its Affiliates under this Agreement, the Related Documents or in connection with the Contemplated Transactions;

(vi) all Liabilities under any Contract (other than the Assumed Liabilities);

(vii) all Liabilities under all Business Employee Benefit Plans;

(viii) all Liabilities arising out of the employment or service or termination of employment or service of any employee, officer, director or manager or consultant of Seller or any of its Affiliates, whether or not any such Liabilities are claimed or otherwise arise prior to or after the Closing, other than, in the case of Transferred Business Employees, any such Liabilities that arise after the applicable Transfer Time;

(ix) any Liabilities (including all Actions relating to such Liabilities) of Seller or any of its Affiliates to any Person and claims from any Person relating to or arising out of circumstances existing on or prior to the Closing, including those relating to or arising out of any product liability, patent infringement, breach of warranty or similar claim for injury to person or property that resulted from the use, operation, ownership or misuse of the Purchased Assets or the operation of the business of Seller or any of its Affiliates, including the conduct of the Business, to the extent such conduct occurred on or prior to the Closing;

(x) any Liabilities (including all Actions relating to such Liabilities) from or relating to the Intellectual Property Rights of any Person on or prior to the Closing, including any Liability for any loss or infringement, dilution, misappropriation, other violation thereof or for violation of privacy, personal information or data protection rights that resulted from the use, operation, ownership or misuse of the Purchased Assets or the operation of the business of Seller or any of its Affiliates, including the conduct of the Business, to the extent such conduct occurred on or prior to the Closing; and

(xi) any other Liabilities arising out of the Purchased Assets or the operation of the business of Seller or any of its Affiliates on or prior to the Closing, whether or not any such Liabilities are claimed or otherwise arise prior to or after the Closing (other than the Assumed Liabilities).

Section 2.4. Closing; Closing Deliverables.

(a) Closing. The closing of the Contemplated Transactions (the "Closing") shall take place remotely, by exchange of electronic copies of the agreements, documents, certificates and other instruments set forth in this Section 2.4, at 10:00 a.m., New York City time, on the second Business Day following the satisfaction (or, to the extent permitted, waiver) of the conditions set forth in Article VI (other than those conditions that by their terms are to be satisfied or waived at the Closing, but subject to the satisfaction or waiver of such conditions), or at such other place, time and date as shall be agreed between Buyer and Seller. The date on which the Closing occurs is referred to herein as the "Closing Date."

(b) Seller Closing Deliverables. At the Closing, Seller shall deliver or cause to be delivered to Buyer:

(i) the Bill of Sale, Assignment and Assumption Agreement, substantially in the form of Exhibit 2.4(b)(i) (the "Bill of Sale, Assignment and Assumption Agreement"), duly executed by Seller and/or XBiotech USA, Inc. ("XBiotech USA");

(ii) the Escrow Agreement among Seller, Buyer and the Escrow Agent, substantially in the form of Exhibit 2.4(b)(ii) (the "Escrow Agreement"), duly executed by Seller and the Escrow Agent;

(iii) a Patent Assignment Agreement, substantially in the form of Exhibit 2.4(b)(iii) (the "Patent Assignment Agreement"), duly executed by Seller and/or XBiotech USA;

(iv) a Clinical Manufacturing Agreement, substantially in the form of Exhibit 2.4(b)(iv) (the "Clinical Manufacturing Agreement"), duly executed by XBiotech USA;

(v) a License to Occupy, substantially in the form of Exhibit 2.4(b)(v) (the "License to Occupy"), duly executed by XBiotech USA;

(vi) a Transition Services Agreement, substantially in the form of Exhibit 2.4(b)(vi) (the "Transition Services Agreement"), duly executed by XBiotech USA;

(vii) an IP License Agreement, substantially in the form of Exhibit 2.4(b)(vii) (the "IP License Agreement"), duly executed by Seller;

(viii) a duly completed and accurate IRS Form W-9 or applicable IRS Form W-8; and

(ix) evidence, acceptable to Buyer in its sole discretion, that all Liens set forth on Schedule 3.4(a) have been properly terminated or released on or before the Closing, including either (i) a completed UCC-3 Termination Statement, in a proper form for filing, in respect of each such Lien, or (ii) a payoff letter from the secured party thereunder, in form and substance acceptable to Buyer, certifying that upon receipt by or on behalf of Seller of the amount specified in such payoff letter, such Lien shall be released with no further action and that such secured party will, promptly upon receipt of the specified amount, deliver to Buyer a duly executed UCC-3 Termination Statement, in a proper form for filing, in respect of such Lien.

(c) Buyer Closing Deliverables. At the Closing, Buyer shall deliver or cause to be delivered to Seller:

(i) the payments required pursuant to Section 2.1(b)(i);

(ii) the Bill of Sale, Assignment and Assumption Agreement, duly executed by Buyer and/or its applicable Affiliates;

(iii) the Escrow Agreement, duly executed by Buyer;

(iv) the Patent Assignment Agreement, duly executed by Buyer and/or its applicable Affiliates;

(v) the Clinical Manufacturing Agreement, duly executed by an Affiliate of Buyer;

(vi) the License to Occupy, duly executed by an Affiliate of Buyer;

(vii) the Transition Services Agreement, duly executed by an Affiliate of Buyer; and

(viii) the IP License Agreement, duly executed by Buyer.

Section 2.5. Milestone Payments.

(a) Subject to the terms and conditions of this Agreement, and in further consideration of the sale, conveyance, delivery, transfer and assignment of the Purchased Assets to Buyer and Seller's other covenants and obligations hereunder, Buyer shall pay, or cause to be paid, a milestone payment of $150,000,000 to Seller upon Buyer or its Affiliates (or any of their respective licensees) obtaining, prior to the date that is **[*****]** years following the Closing Date, the Required Commercialization Authorizations for a Product for use in any Non-Dermatological Indication in (A) the **[*****]** or (B) **[*****]** of the **[*****]** (each, a "Milestone Payment").

(b) Notwithstanding anything to the contrary set forth in Section 2.5(a), Seller shall be eligible to earn up to a maximum of four Milestone Payments, for a maximum of $600,000,000. In no event shall Buyer be obligated to make Milestone Payments in excess of $600,000,000 or to make any Milestone Payment in respect of activities occurring on or after the date that is **[*****]** years following the Closing Date.

(c) Buyer shall notify Seller in writing within **[*****]** Business Days after the achievement of a milestone described in Section 2.5(a) above by Buyer or any of its Affiliates (or any of their respective licensees), and Buyer shall pay Seller a Milestone Payment no earlier than **[*****]** days and no later than **[*****]** days after such notification to Seller. Payment of any Milestone Payment to Seller shall be made by wire transfer of immediately available funds to the account set forth on Schedule 2.1(b)(i) (or as otherwise directed by Seller in writing).

(d) Upon the payment of any Milestone Payment, the Non-Dermatological Indication in respect of which such Milestone Payment was paid shall be deemed to be a Specified Indication; provided that, at any time following the delivery of a notice in respect of a Milestone Payment described in Section 2.5(c) and prior to the payment of such Milestone Payment, Seller may elect, by written notice to Buyer, to waive its right to such Milestone Payment, in which case (i) the Non-Dermatological Indication in respect of which such Milestone Payment would have been payable shall not be deemed to be a Specified Indication and (ii) such waived and unpaid Milestone Payment shall otherwise be deemed to have been paid and shall be counted as one of the four Milestone Payments that Seller is eligible to earn.

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

(e) Notwithstanding anything to the contrary set forth in this Section 2.5, it is the intention of the Parties that the Exploitation of the Compound shall be exercised by Buyer and its Affiliates in accordance with their own business judgment and in their sole and absolute discretion. Accordingly, the following shall apply (and Seller hereby acknowledges, understands and agrees as follows):

(i) Buyer and its Affiliates shall have complete control and sole discretion with respect to decisions concerning the Exploitation of the Compound and such control and discretion by Buyer and its Affiliates could result in Seller receiving no Milestone Payment whatsoever;

(ii) neither Buyer nor any of its Affiliates has any duty to Exploit the Compound, to exert any level of efforts in Exploiting the Compound or to achieve the milestone described in Section 2.5(a) above;

(iii) whether or not Buyer or any of its Affiliates Exploit the Compound, neither Buyer nor any of its Affiliates is prohibited from Exploiting any other compounds or products that may compete with the Compound, or prioritizing other compounds or products over the Compound;

(iv) in making decisions regarding the Exploitation of the Compound, personnel of Buyer and its Affiliates are not required to take into account the interests of Seller; and

(v) Seller shall not challenge in any Action any decision to, or not to, Exploit the Compound made by any director, officer, employee or agent of Buyer or any of its Affiliates, unless such Action is in respect of a breach by Buyer of any of its express obligations to make a Milestone Payment under this Section 2.5.

Section 2.6. Third Party Consents. If the assignment or transfer of any asset included in the Purchased Assets or any claim, right or benefit arising thereunder or resulting therefrom, without the consent of a Third Party, would constitute a breach or other contravention of the rights of such Third Party, would be ineffective with respect to any party to an agreement concerning such asset, claim, right or benefit, or, upon assignment or transfer, would in any way adversely affect the rights of Seller or, upon transfer, Buyer (each, a "Non-Assignable Right"), then Seller shall use its commercially reasonable efforts, at Seller's sole cost and expense, to obtain such consent after the execution of this Agreement until such consent is obtained. If any such consent cannot be obtained prior to the Closing and the Closing occurs, then, notwithstanding anything to the contrary in this Agreement or any Related Document, (a) this Agreement and the related instruments of transfer shall not constitute an assignment or transfer of the applicable Non-Assignable Right until and unless such consent is obtained (at which point such Non-Assignable Right will be deemed to have been assigned or transferred under this Agreement on such date (the "Transfer Date")), and Seller shall use its commercially reasonable efforts, at Seller's sole cost and expense, to obtain such consent as soon as possible after the Closing; and (b) upon delivery of Buyer's written election to Seller, (i) the Non-Assignable Right shall be an Excluded Asset and Buyer shall have no Liability whatsoever with respect to any such Non-Assignable Right or any Liability with respect thereto (and any consent to transfer or assignment obtained thereafter shall have no effect) or (ii) Seller shall, at its sole cost and expense, obtain for Buyer substantially all of the practical benefit and burden of such Non-Assignable Right, including by (A) entering into appropriate and reasonable alternative arrangements on terms mutually agreeable to Buyer and Seller, (B) subject to the consent and control of Buyer, enforcement, at the cost and for the account of Buyer, of any and all rights of Seller against the other party thereto arising out of the breach or cancellation thereof by such other party or otherwise and (C) continuing to comply with, and perform, any contractual obligations associated with such Non-Assignable Right. For the avoidance of doubt, nothing in this Section 2.6 shall affect any determination as to whether any of the conditions set forth in Article VI have been satisfied.

Section 2.7. Escrow Amount.

(a) In accordance with Section 2.1(b)(i), at the Closing, Buyer shall deposit with JPMorgan Chase Bank, National Association (the "Escrow Agent"), an amount equal to the Escrow Amount, such amount plus all accumulated earnings thereon (such amounts, if any, "Escrow Consideration") to constitute an escrow fund (the "Escrow Fund") to be governed in accordance with the terms of this Agreement and the Escrow Agreement. The Escrow Fund may be used to satisfy any indemnification amounts owed by Seller pursuant to Article VII.

(b) Upon the date that is 18 months from the Closing (the "Escrow Termination Date"), the Escrow Agent shall, in accordance with the Escrow Agreement, release the remaining amount in the Escrow Fund at such time, less the Outstanding Claim Reserve at such time, to Seller. If, at any time after the Escrow Termination Date, the Outstanding Claim Reserve, as determined by Buyer in good faith, by a court or by mutual agreement of Buyer and Seller, is less than the Escrow Fund at such time, then an amount equal to such difference shall be released to Seller.

(c) For purposes of this Section 2.7, "Outstanding Claim Reserve" as of any date means the sum of all amounts claimed by Buyer as of such date to be then owed to the Buyer Indemnified Parties in respect of indemnity claims made by the Buyer Indemnified Parties as of such date in accordance with Article VII.

(d) All funds so released from the Escrow Fund shall include any Escrow Consideration earned thereon. The amount of any funds released from the Escrow Fund pursuant to Section 2.7(b) shall, for the avoidance of doubt, be deemed a part of the Purchase Price to the extent permitted by applicable Law. The Escrow Fund shall be held as a trust fund and shall not be subject to any Lien, and shall be held and disbursed solely for the purposes and in accordance with the terms of this Agreement and the Escrow Agreement. Upon the final release of all of the Escrow Fund, the Escrow Agreement shall terminate.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLER

Subject to the Schedules attached hereto (to the extent any such Schedule is numbered to correspond to a representation or warranty), Seller represents and warrants to Buyer as set forth in this Article III.

Section 3.1. Organization, Standing and Power. Seller is a corporation, duly organized, validly existing and in good standing under the laws of the Province of British Columbia, and has all requisite corporate power and authority to own, lease or otherwise hold and operate its properties and other assets and to carry on its business as presently conducted, except where the failure to be in good standing or have such power or authority, individually or in the aggregate, has not been and would not reasonably be expected to be material to Seller or the Business. Seller and each of its Affiliates is duly qualified or licensed to do business and is in good standing (in jurisdictions that recognize the concept of good standing) in each jurisdiction in which the nature of its business or the ownership, leasing or operation of its properties makes such qualification or licensing necessary, other than in such jurisdictions where the failure to be so qualified or licensed or to be in good standing individually or in the aggregate has not been and would not reasonably be expected to be material to Seller or the Business. Seller has made available to Buyer, prior to the execution of this Agreement, complete and accurate copies of Seller's articles (" Seller's Charter"), as amended to the date hereof. Seller is not in violation of any of the provisions of Seller's Charter.

Section 3.2. Authority; Noncontravention. (a) Seller has all requisite corporate power and authority to execute and deliver this Agreement and the Related Documents and to consummate the Contemplated Transactions. The execution and delivery of this Agreement and the Related Documents by Seller and the consummation by Seller of the Contemplated Transactions have been duly authorized by all necessary corporate action on the part of Seller and no other corporate proceedings on the part of Seller or any of its Affiliates are necessary to authorize this Agreement, the Related Documents or to consummate the Contemplated Transactions. Each of this Agreement and the Related Documents has been duly executed and delivered by Seller and, assuming the due authorization, execution and delivery by Buyer, constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, subject to bankruptcy, insolvency, moratorium, reorganization or similar Laws affecting the rights of creditors generally and the availability of equitable remedies. No stockholder or other equity holder approval is required on behalf of Seller for the execution, delivery or performance of this Agreement or any Related Document.

(b) The execution and delivery of this Agreement and the Related Documents by Seller do not, and the consummation of the Contemplated Transactions and compliance by Seller with the provisions of this Agreement and the Related Documents will not, conflict with, or result in any violation or breach of, or default under (with or without notice or lapse of time, or both), or give rise to a right of, or result in, termination, cancellation or acceleration of any obligation or to the loss of a benefit under, or result in the creation of any Lien in or upon the Purchased Assets under, (i) Seller's Charter, (ii) any Contract to which Seller or any of its Affiliates is a party or to which any of the Purchased Assets are subject or (iii) any (A) statute, ordinance, rule, regulation or other Law applicable to Seller, any of its Affiliates or the Business or (B) Order applicable to Seller, any of its Affiliates or the Business, except in the cases of clauses (ii) and (iii), where the conflict, violation, breach, default, termination, cancellation, acceleration or creation of a Lien, individually or in the aggregate, has not been and would not reasonably be expected to be material to Seller or the Business, or that would not reasonably be expected to prevent, materially impede or materially delay the consummation by Seller of the Contemplated Transactions.

(c) No consent, approval, Order or authorization of, action by or in respect of, or registration, declaration or filing with, any Governmental Authority (each, a "Governmental Consent") is required by or with respect to Seller, any of its Affiliates or the Business in connection with the execution and delivery of this Agreement or any Related Document by Seller, the transfer of the Purchased Assets to Buyer or the consummation of the Contemplated Transactions, except for (i) such consents, approvals, Orders, authorizations, actions, registrations, declarations or filings the absence of which, individually or in the aggregate, would not reasonably be expected to be material to Seller or the Business, (ii) filing assignments with respect to registered Patents, Trademarks and Copyrights and (iii) the receipt, termination or expiration, as applicable, of approvals or waiting periods under any applicable antitrust, competition, fair trade or similar Laws.

Section 3.3. Absence of Certain Changes or Events. Since December 31, 2018 (a) no event has occurred which would reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect, (b) there has been no material loss, destruction or damage (in each case, whether or not insured) affecting the Business and (c) Seller and its Affiliates have conducted activities with respect to the Business in the ordinary course of business consistent with past practice and have not taken any actions, which, if taken after the date of this Agreement and prior to the Closing Date would constitute a breach of Section 5.1(b).

Section 3.4. Good Title; Sufficiency of Assets.

(a) (i) Seller (together with its Affiliates) has good and marketable title to, or valid contract rights to, as applicable, all of the Purchased Assets free and clear of all Liens (other than Permitted Liens), and has the complete and unrestricted power and unqualified right to sell, assign, transfer and deliver to Buyer, as applicable, the Purchased Assets and (ii) there are no adverse claims of ownership to the Purchased Assets and neither Seller nor any of its Affiliates has received notice that any Person has asserted a claim of ownership or right of possession or use in or to any of the Purchased Assets, nor are there, to Seller's Knowledge, any facts, circumstances or conditions on which any such claim could be brought in the future. At the Closing, Buyer will acquire from Seller (and its Affiliates) good and marketable title to, or valid contract rights to, as applicable, all of the Purchased Assets, free and clear of all Liens (other than Permitted Liens).

(b) Except as set forth on Schedule 3.4(b), the Purchased Assets, together with the Intellectual Property Rights licensed pursuant to the IP License Agreement, constitute (i) all of the properties, interests, assets and rights of Seller or any of its Affiliates acquired, conceived, collected, compiled, generated, reduced to practice or otherwise made or used in connection with the Compound Program and (ii) all of the properties, interests, assets and rights of Seller or any of its Affiliates used, held for use or intended to be used in connection with the Compound Program or the Compound, in each case that are reasonably necessary for Buyer and its Affiliates to continue to conduct the Compound Program as conducted during the Reference Period.

Section 3.5. Intellectual Property.

(a) Subject to Sections 3.5(b) and 3.5(f), Seller (together with its Affiliates) exclusively owns, or validly Controls, all Seller Intellectual Property (including all Intellectual Property Rights set forth on Schedule 1.1(d)), in each case free and clear of all Liens (other than Permitted Liens). Each such Intellectual Property Right will, immediately subsequent to the Closing, be transferred to, and Controlled by, Buyer on the same terms with which Seller (or its applicable Affiliate), immediately prior to the Closing, Controlled such Intellectual Property Right (subject to the effect of the IP License Agreement). Other than as set forth on Schedule 1.1(d), there are no Trademarks, Copyrights or Software that are owned or Controlled by Seller and primarily related to or reasonably necessary to conduct the Business as conducted during the Reference Period. Seller and its Affiliates have used reasonable efforts to make all filings with Governmental Authorities and obtain all grants and registrations as may be necessary or appropriate to preserve and protect the Seller Intellectual Property.

(b) To Seller's Knowledge, neither Seller nor any of its Affiliates has infringed, diluted, misappropriated or otherwise violated or is infringing, diluting, misappropriating or otherwise violating (including with respect to the discovery, development, clinical testing, manufacture, distribution, advertising, use, Exploitation or sale by Seller or any of its Affiliates of the Compound) the rights of any other Person with regard to Seller's or its Affiliates' possession, use or Control of any Seller Intellectual Property for the Business as conducted during the Reference Period. To Seller's Knowledge, no other Person or Persons has infringed, diluted, misappropriated or otherwise violated or is or are infringing, diluting, misappropriating or otherwise violating the Seller Intellectual Property.

(c) The Seller Intellectual Property is, to Seller's Knowledge, enforceable and valid, and no claims against Seller or any of its Affiliates are pending or, to Seller's Knowledge, threatened with regard to (i) the Control or use of any Seller Intellectual Property; (ii) any actual or potential infringement, dilution, misappropriation or unauthorized use of Seller Intellectual Property; (iii) any actual or potential infringement, dilution, misappropriation or unauthorized use of any Third Party's Intellectual Property Rights with respect to any Seller Intellectual Property or the Business; or (iv) the validity or enforceability of any Seller Intellectual Property. Seller (or its applicable Affiliate) has the right to bring actions for infringement, including all rights to recover damages for past infringement (to the extent permitted by applicable Law), of all Seller Intellectual Property.

(d) Schedule 1.1(d) sets forth, as of the date hereof, a complete and accurate list of all patents and applications therefor (which list specifically identifies all patents and patent applications solely and exclusively owned by Seller and its Affiliates), registered trademarks and applications therefor (if any), material common law trademarks, domain name registrations (if any), copyright registrations (if any) and all invention disclosures, that, in each case, are Controlled by Seller and its Affiliates and related to the Business. The patent applications listed in Schedule 1.1(d) that are owned by Seller and its Affiliates are (and such applications that are otherwise Controlled by Seller and its Affiliates are, to Seller's Knowledge) pending and have not been abandoned and have been and continue to be timely prosecuted except as otherwise set forth in Schedule 1.1(d). All patents, registered trademarks and applications therefor owned by Seller and its Affiliates that are related to the Business have been (and all such patents, registered trademarks and applications otherwise Controlled by Seller and its Affiliates have been to Seller's Knowledge) duly registered or filed with or issued by each appropriate Governmental Authority in the jurisdiction indicated in Schedule 1.1(d), all related necessary affidavits of continuing use have been (or, with respect to licenses, to Seller's Knowledge have been) timely filed, and all related necessary maintenance fees have been (or, with respect to licenses, to Seller's Knowledge have been) timely paid to continue all such rights in effect except as otherwise set forth in Schedule 1.1(d). None of the patents listed in Schedule 1.1(d) that are owned by Seller or its Affiliates has (and no such patents that are otherwise Controlled by Seller or its Affiliates have, to Seller's Knowledge) expired, been disclaimed (except by terminal disclaimers), in whole or in part, been declared invalid, in whole or in part, or held to be unenforceable by any Governmental Authority except as otherwise set forth in Schedule 1.1(d). None of the trademarks or trademark applications listed in Schedule 1.1(d) that are owned by Seller or its Affiliates are (and no such trademarks or trademark applications that are otherwise Controlled by Seller or its Affiliates are to Seller's Knowledge) involved in or the subject of any ongoing oppositions, cancellations or other proceedings. None of the patents or patent applications listed in Schedule 1.1(d) that are owned by Seller or its Affiliates are (and no such patents or patent applications that are otherwise Controlled by Seller or its Affiliates are, to Seller's Knowledge) involved in or the subject of any material ongoing interferences, oppositions, reissues, reexaminations or other proceedings (except for appeals), including ex parte (other than ex parte proceedings in connection with such patent applications) and post-grant proceedings, in the United States Patent and Trademark Office or in any foreign patent office or similar administrative agency. To Seller's Knowledge, there are no published patents, patent applications, articles or other prior art references that are likely to invalidate any patent listed in Schedule 1.1(d). Each of the patents and patent applications listed in Schedule 1.1(d) that are owned by Seller and its Affiliates properly identifies (and, to Seller's Knowledge, such patents and applications otherwise Controlled by Seller and its Affiliates properly identify) each and every inventor of the claims thereof as determined in accordance with the Laws of the jurisdiction in which such patent is issued or such patent application is pending. Each inventor named on the patents and patent applications listed in Schedule 1.1(d) that are owned by Seller and its Affiliates has executed (and, to Seller's Knowledge, such inventors named on such patents and applications that are otherwise Controlled by Seller and its Affiliates and material to the Business have executed) an agreement assigning his, her or its entire right, title and interest in and to such patent or patent application, and the inventions embodied and claimed therein, to Seller or an Affiliate of Seller, or in the case of licensed Patents, to the appropriate owners. No such inventor has any contractual or other obligation that would preclude any such assignment or otherwise conflict with the obligations of such inventor to Seller or an Affiliate of Seller under such agreement with Seller or such Affiliate.

(e) No current or former director, officer, employee, contractor or consultant of Seller or any of its Affiliates owns any rights in or to any Seller Intellectual Property. All current and former directors, officers, employees, contractors and consultants of Seller and any of its Affiliates who contributed to the Business or to the discovery, creation or development of any Seller Intellectual Property did so (i) within the scope of his or her employment such that it constituted a work made for hire and all Seller Intellectual Property arising therefrom became the exclusive property of Seller (or an Affiliate thereof) or (ii) pursuant to a written agreement, assigned all of his or her rights in Seller Intellectual Property to Seller (or an Affiliate thereof). No current or former directors, officers, employees, contractors or consultants of Seller or any of its Affiliates has made or threatened to make any claim or challenge against Seller or any of its Affiliates in connection with their contribution to the Business or to the discovery, creation or development of any Seller Intellectual Property.

(f) Schedule 3.5(f) sets forth a complete and accurate list as of the date hereof of all options, rights, licenses or interests of any kind relating to any Seller Intellectual Property, other than options, rights, licenses or interests pursuant to the terms of the Assumed Contracts, that were (i) granted to Seller or any of its Affiliates by any other Person (other than software licenses for commercially available off the shelf software and except pursuant to employee proprietary inventions agreements (or similar employee agreements)), or (ii) granted by Seller or any of its Affiliates to any other Person (including any obligations of such other Person to make any fixed or contingent payments, including royalty payments). All obligations for payment of monies currently due and payable by Seller or any of its Affiliates and other material obligations in connection with such options, rights, licenses or interests have been satisfied in a timely manner.

(g) Each of Seller and its Affiliates has used reasonable efforts and taken commercially reasonable steps designed to maintain, preserve and protect its Trade Secrets and other confidential information acquired, conceived, developed, collected, compiled, generated, reduced to practice or otherwise made or used in connection with or related to the Business, including through (1) the development of a policy for the protection of Intellectual Property Rights, (2) requiring all employees of Seller and its Affiliates to execute confidentiality agreements with respect to Intellectual Property Rights developed for or obtained from Seller and its Affiliates and (3) entering into licenses and Contracts that generally require licensees, contractors and other Third Parties with access to the Trade Secrets or other confidential information to keep such Trade Secrets or other confidential information confidential.

(h) The execution and delivery of this Agreement and the Related Documents by Seller do not, and the consummation of the Contemplated Transactions and compliance by Seller with the provisions of this Agreement and any Related Document will not, conflict with, or result in any violation or breach of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of, or result in, termination, cancellation or acceleration of any right or obligation or to the loss of a benefit under, or result in the creation of any Lien in or upon or the transfer of, any Seller Intellectual Property that is material to the Business.

(i) Schedule 3.5(i) accurately describes each development program conducted by Seller as of the date hereof with respect to any monoclonal antibody other than bermekimab that targets human Interleukin 1 alpha (any such monoclonal antibody, an "Existing Antibody"), none of which development programs were initiated prior to **[*****]**. Each Existing Antibody described on Schedule 3.5(i) (i) was identified and developed as a result of a *de novo* discovery and development effort undertaken by Seller or any of its Affiliates without the use of or reference to **[*****]** including by means of **[*****]** (ii) qualifies as a new molecular entity under FDA regulations and guidelines and (iii) **[*****]**.

(j) Other than the Compound Program or any development program described on Schedule 3.5(i), neither Seller nor any of its Affiliates or, to Seller's Knowledge, any of its or their Third Party collaborators, has any development program that produced any molecules that bind human Interleukin 1 alpha and have demonstrable biological activity.

(k) Neither Seller nor any of its Affiliates owns, Controls or has an interest in any monoclonal antibody that targets human Interleukin 1 alpha other than the Compound or an Existing Antibody, with the exception of any non-human anti-human anti-IL-1a antibody used for research purposes in which any such antibody was not administered to humans.

(l) Seller has disclosed to Buyer all Data and information relating to the Compound and any other monoclonal antibody that targets human Interleukin 1 alpha in its ownership or Control.

Section 3.6. Assumed Contracts.

(a) There are no Contracts, other than the Assumed Contracts (including any Contracts that become Assumed Contracts pursuant to Section 5.7(d) following the date hereof) and the Excluded Contracts, (i) to which Seller or any of its Affiliates is a party or by which Seller or any of its Affiliates is bound, in either case, that are primarily related or material to the Business or (ii) to which any of the Purchased Assets are subject.

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

(b) Seller has made available to Buyer true, accurate and complete copies of the Assumed Contracts (and any Contracts listed on Schedule 3.6(a)), including all amendments, modifications and waivers relating thereto. The Assumed Contracts are legal, valid and binding agreements of Seller or an Affiliate of Seller and are in full force and effect and are enforceable against Seller or its applicable Affiliate and, to Seller's Knowledge, each other party thereto, in accordance with their terms, subject to bankruptcy, insolvency, moratorium, reorganization or similar Laws affecting the rights of creditors generally and the availability of equitable remedies. Seller or its applicable Affiliate has performed all obligations required to be performed by it to date under the Assumed Contracts, and neither Seller nor its applicable Affiliate is or will be (with or without notice or lapse of time, or both) in breach or default in any respect thereunder and, to Seller's Knowledge, no other party to any Assumed Contract is or will be (with or without notice or lapse of time, or both) in breach or default in any respect thereunder. Neither Seller nor any of its Affiliates has received any notice of intention to terminate any Assumed Contract or of any claim of breach with respect to the performance of Seller's (or its applicable Affiliate's) obligations under any Assumed Contract.

Section 3.7. Compliance with Law; Permits.

(a) The business and operations of Seller and its Affiliates as such business and operations relate to the Business are and, since January 1, 2015, have been conducted in compliance in all material respects with all applicable Laws.

(b) Seller and its Affiliates have and, since January 1, 2015, have had and maintained all material Permits necessary for such business and operations, except where the failure to have such Permits individually or in the aggregate has not been and would not reasonably be expected to be material to Seller or the Business. Schedule 3.7(b) sets forth a true, accurate and complete list of each such Permit, and each such Permit is valid and in full force and effect. There has occurred no material default by Seller or its Affiliates under, or material violation by Seller or its Affiliates of, any such Permit.

(c) Neither Seller nor any of its Affiliates has received any notice from any Governmental Authority or other Person to the effect that Seller or its applicable Affiliate is not, or may not be, in compliance with any Law or any Permit in any material respect with respect to the Business. No Action is pending or, to Seller's Knowledge, threatened to cancel, suspend, revoke or limit any of the Permits and, to Seller's Knowledge, there is no basis for any such Action.

Section 3.8. Litigation. There is no Action pending or, to Seller's Knowledge, threatened before or by any Governmental Authority that, if successful, could reasonably be expected to be materially adverse to the Business or could reasonably be expected to result in restraining, enjoining or otherwise preventing the consummation by Seller of the Contemplated Transactions, nor are there currently in existence, to Seller's Knowledge, any facts, circumstances or conditions reasonably likely to give rise to any such Action in the future. There is no outstanding Order of any Governmental Authority against Seller or any of its Affiliates arising out of or relating to the Business that could reasonably be expected to be materially adverse to the Business or that could reasonably be expected to result in restraining, enjoining or otherwise preventing the consummation by Seller of the Contemplated Transactions.

Section 3.9. Taxes.

(a) All Tax Returns required to be filed for any Pre-Closing Tax Period with respect to the Purchased Assets have been filed when due in accordance with all applicable Laws. Each such Tax Return is complete and accurate in all respects.

(b) All Taxes required to be paid with respect to the Purchased Assets have been duly and timely paid in accordance with all applicable Laws.

(c) There are no Liens for Taxes on the Purchased Assets, except for statutory Liens for Taxes that are not yet due and payable.

(d) No Taxing Authority has asserted an adjustment in writing that could result in the creation of a Lien on any of the Purchased Assets.

(e) No Tax Return of any of Seller or any of its Affiliates to the extent related to the Purchased Assets is under audit or examination by any Taxing Authority, and no such audit or examination has been threatened in writing.

(f) Seller and the Affiliates of Seller that own the Purchased Assets have complied in all respects with all applicable Laws relating to the collection, payment and withholding of Taxes and has, within the time and manner prescribed by Law, collected, withheld from and paid over to the appropriate Taxing Authority all amounts required to be so collected, withheld and paid over under applicable Law.

(g) Except as set forth on Schedule 3.9(g), neither Seller nor any of its Affiliates that own the Purchased Assets is a non-resident of Canada for purposes of the *Income Tax Act* (Canada). None of the Purchased Assets being sold by any entity identified on Schedule 3.9(g) as being a non-resident of Canada constitutes "taxable Canadian property" for purposes of the *Income Tax Act* (Canada).

Section 3.10. Employees and Employee Benefit Plans; Labor Relations.

(a) Schedule 3.10(a) sets forth a true, accurate and complete list as of the date hereof of each Business Employee Benefit Plan. Seller has made available to Buyer, with respect to each Business Employee Benefit Plan as of the date hereof, (i) a true, accurate and complete copy of all plan documents, if any, including related trust agreements, funding arrangements, and insurance contracts and all amendments thereto and (ii) to the extent applicable, all current summary plan descriptions and summaries of material modifications.

(b) Each Business Employee Benefit Plan has been established, administered and maintained in accordance with its terms, and in compliance with ERISA, the Code and all other applicable Laws, except as would not reasonably be expected to be materially adverse to the Business or any Business Employee. All contributions in respect of the Business Employees required to have been made under any of the Business Employee Benefit Plans to any funds or trusts established thereunder or in connection therewith have been made or have been accrued.

(c) With respect to the Business Employees, and other than as provided in the offers of employment described in Section 5.10, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement will, either alone or upon the occurrence of any additional or subsequent event, (i) cause any payments to become due or payable, (ii) cause any acceleration, vesting or increase of compensation or benefits, or result in any payment or funding (through a grantor trust or otherwise) of material compensation or benefits or (iii) result in any payment that would be considered an "excess parachute payment" within the meaning of Section 280G of the Code. No Business Employee is entitled to any Tax gross-up, make whole or similar payment with respect to any Taxes or penalties imposed under Sections 409A or 4999 of the Code or otherwise.

(d) There are no pending or, to Seller's Knowledge, threatened, actions, claims or lawsuits against or relating to any Business Employee Benefit Plan or any trusts related thereto with respect to the operation of such plan (other than routine benefits claims) that, if successful, could reasonably be expected to be materially adverse to the Business or any Business Employee.

(e) Except as would not reasonably be expected to be materially adverse to the Business or any Business Employee, none of Seller, any of its ERISA Affiliates nor any of their respective predecessors has, in the six years preceding the date of this Agreement, sponsored, maintained or contributed to: (i) any plan that is or was subject to Title IV of ERISA; (ii) any "multiple employer welfare arrangement" as defined in Section 3(40)(A) of ERISA or a "voluntary employees' beneficiary association" as defined in Section 501(c)(9) of the Code; or (iii) any "multiemployer plan" as defined in Section 4001(a)(3) of ERISA, "multiple employer plan" as defined in 29 C.F.R. § 4001.2 or plan subject to Section 413(c) of the Code.

(f) Seller and its Affiliates do not have any current or projected liability in respect of, and do not sponsor or otherwise provide any, post-employment or post-retirement health or medical or life insurance benefits for any Business Employee, except as may be required by Section 4980B of the Code and Section 601 of ERISA or any other applicable Law or at the sole expense of the Business Employee or the Business Employee's beneficiary.

(g) Except as would not reasonably be expected to be materially adverse to the Business or any Business Employee, each Business Employee Benefit Plan that is or forms part of a "nonqualified deferred compensation plan" within the meaning of Section 409A of the Code is in documentary compliance with the requirements of Section 409A of the Code, and Seller and its Affiliates have complied in practice and operation with all applicable requirements of Section 409A of the Code.

(h) For each Business Employee, Schedule 3.10(h) sets forth such Business Employee's name, job title, date of hire, Fair Labor Standards Act designation (where relevant), work location (identified by street address), current compensation rate, total incentive compensation paid for the prior year (including sales incentives and commissions), incentive compensation opportunity for the current year (including sales incentives and commissions), all other wage arrangements, fringe benefits (other than employee benefits generally applicable to all of the Seller's employees that are set forth on Schedule 3.10(a)), and visa and green card application status or other relevant immigration application status.

(i) As of the date hereof, with respect to any Business Employee: (i) neither Seller nor any of its Affiliates is a party to or subject to, or is currently negotiating in connection with entering into, any collective bargaining or other Contract with any labor organization or representative and, to Seller's Knowledge, there has not been any other organizational campaign, petition or other unionization activity seeking recognition of a collective bargaining unit or other labor organization or representative; (ii) there is no labor strike, slowdown, stoppage, picketing, interruption of work or lockout pending or, to Seller's Knowledge, threatened against Seller or any of its Affiliates; and (iii) there are no labor- or employment-related Actions, grievances, complaints or other charges pending or, to Seller's Knowledge, threatened against Seller or any of its Affiliates by or before any Governmental Authority that could reasonably be expected to be materially adverse to the Business or any Business Employee.

(j) With respect to the Business Employees, Seller and its Affiliates are and at all times have been in material compliance with, all applicable Laws governing the employment of labor and the engagement of other service providers, reporting to the IRS and all other Governmental Authorities, and the paying and withholding of Taxes, including but not limited to, all contractual commitments and all such Laws relating to wages, hours, the classification of service providers, immigration and employment verification (including completion of Forms I-9), affirmative action, collective bargaining, discrimination, civil rights, safety and health, workers' compensation, reporting of compensation and benefits and the collection and payment of income, employment and other Taxes.

(k) Since January 1, 2013, to Seller's Knowledge, no allegations or reports of sexual harassment or discrimination with respect to a protected classification, including race and gender, have been made to Seller or any of its Affiliates against a Business Employee.

Section 3.11. Regulatory Matters.

(a) Schedule 3.11(a) sets forth as of the date hereof a true and complete list of all Seller Regulatory Authorizations. The Seller Regulatory Authorizations include all material Regulatory Authorizations that are required for or primarily relate to the conduct of the Business as presently conducted by Seller and its Affiliates. Seller or one of its Affiliates is the sole and exclusive owner of all of the Seller Regulatory Authorizations and none of the Seller Regulatory Authorizations have been sold, conveyed, delivered, transferred or assigned to another party. Each such Seller Regulatory Authorization (A) has, to Seller's Knowledge, been validly issued or acknowledged by the appropriate Governmental Authority and is in full force and effect and (B) is transferable to Buyer. To Seller's Knowledge, there are no facts, circumstances or conditions that would reasonably be expected to prevent Seller from performing its obligations with respect to the transfer of any Seller Regulatory Authorization to Buyer on or after the Closing Date, as provided in Section 5.11.

(b) Schedule 3.11(b) sets forth a true and complete list of all pre-clinical and clinical studies, trials and investigations conducted or sponsored by Seller or any of its Affiliates or, to Seller's Knowledge, by any other Person on or prior to the date hereof in relation to the Business. Except as set forth on Schedule 3.11(b), all pre-clinical and clinical studies, trials and investigations conducted or sponsored by Seller or any of its Affiliates or, to Seller's Knowledge, by any other Person in relation to the Business are being, and at all times have been, conducted in compliance in all material respects with all then applicable clinical protocols, informed consents and then applicable Laws administered or issued by applicable Governmental Authorities, including (to the extent applicable) (i) the U.S. Food and Drug Administration ("FDA") or other health authority standards for conducting non-clinical laboratory studies, including those contained in Title 21, part 58 of the Code of Federal Regulations and associated regulatory guidance, (ii) investigational new drug requirements and associated regulatory guidance, (iii) FDA or other health authority standards for the design, conduct, performance, monitoring, auditing, recording, analysis and reporting of clinical trials, including those contained in Title 21, parts 50, 54, 56, 312, 314, 320 and 601 of the Code of Federal Regulations and associated regulatory guidance, and (iv) the International Conference on Harmonisation Guideline on Good Clinical Practice (ICH Topic E6) and associated regulatory guidance. Except as set forth on Schedule 3.11(b), there have been no drug-related, adverse event or events in patients in a clinical trial conducted or sponsored in relation to the Business, the effect of which could reasonably be expected to prevent or materially delay Buyer from obtaining approval from a Governmental Authority to market a Product in the United States. All clinical trial adverse events in patients in a clinical trial conducted or sponsored in relation to the Business, to Seller's Knowledge, have been disclosed to Buyer and all associated correspondence, including actual or potential claims for recompense, have been made available to Buyer.

(c) Schedule 3.11(c) sets forth a true, accurate and complete copy of Seller's budget for the Specified Clinical Trials (as defined in the Transition Services Agreement), which such budget has been prepared by Seller in good faith, based on reasonable estimates and assumptions made by the management of Seller.

(d) No Governmental Authority has commenced, or, to Seller's Knowledge, threatened to initiate, any Action to place a clinical hold order on, or otherwise terminate, delay or suspend any proposed or ongoing pre-clinical or clinical studies, trials, investigational new drug application or investigations conducted or proposed to be conducted in connection with the Business.

(e) Seller and its Affiliates have not received any oral or written communication (including any warning letter, untitled letter, Form 483 or similar notice) from any Governmental Authority, and to Seller's Knowledge there are no material Actions related to the Business pending or threatened (including any prosecution, injunction, seizure, civil fine, suspension or recall), in each case (i) relating to, arising under or alleging that Seller, any of its Affiliates or any of its or their officers, employees or agents is not currently in compliance with, any Law administered or issued by any Governmental Authority or (ii) regarding any debarment action or investigation in respect of Seller, any of its Affiliates or any of its or their officers, employees or agents undertaken pursuant to 21 U.S.C. Sections 335(a), (b) and (c), or any similar regulation of a Governmental Authority. There are no pending voluntary or involuntary destruction orders, seizures or other regulatory enforcement actions related to the Business and, to Seller's Knowledge, no Data relating to the Compound that has been made public is the subject of any regulatory or other Action, either pending or threatened, by any Governmental Authority relating to the truthfulness or scientific adequacy of such Data.

(f) Since January 1, 2017, none of Seller, its Affiliates nor, to Seller's Knowledge, any officer, employee, agent or distributor of Seller or its Affiliates, has made an untrue statement of a material fact or fraudulent statement to the FDA or any other Governmental Authority, failed to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority, or committed an act, made a statement, or failed to make a statement that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities", set forth in 56 Fed. Reg. 46191 (September 10, 1991) or for any other Governmental Authority to invoke any similar policy. None of Seller, its Affiliates nor, to Seller's Knowledge, any officer, employee or agent of Seller or its Affiliates has been convicted of any crime or engaged in any conduct for which debarment is mandated by or authorized by 21 U.S.C. Sections 335(a), (b) and (c) or any similar Laws. None of Seller, its Affiliates nor, to Seller's Knowledge, any officer, employee or agent of Seller or its Affiliates has been convicted of any crime or engaged in any conduct for which such Person could be excluded from participating in the Federal health care programs under Section 1128 of the Social Security Act of 1935, as amended (the "Social Security Act"), or any similar Laws.

(g) Seller and its Affiliates are, and, since January 1, 2017, have been, in compliance with: (i) laws, regulations and guidance pertaining to state and federal Anti-Kickback Statutes (42 U.S.C. §§ 1320a-7b(b), et seq. and their implementing regulations) and the related Safe Harbor Statutes; (ii) laws, regulations and guidance pertaining to submission of false claims to governmental or private health care payors (31 U.S.C. §§ 3729, et seq. and its implementing regulations); and (iii) state laws and federal laws and regulations relating to providing and reporting of payments to health care professionals or health care entities.

(h) None of Seller or any of its Affiliates is a "covered entity" or a "business associate" pursuant to the Health Insurance Portability and Accountability Act of 1996 (as those terms are defined in 45 C.F.R. §160.103). With regard to their activities related to the Purchased Assets, Seller and its Affiliates have complied in all material respects with all other applicable Laws relating to the privacy and security of individually identifiable information, including the Federal Trade Commission Act, the Children's Online Privacy Protection Act (COPPA), and similar Laws in any foreign jurisdiction in which Seller or any of its Affiliates does business.

Section 3.12. Inventory. Schedule 3.12 sets forth the Inventory as of the date hereof. As of the date hereof, the ingredients, intermediates, raw materials, components, consumables, finished product forms, work-in-progress materials and packaging materials contained in the Inventory (a) are free from any material defect or deficiency, (b) are in good and usable condition in the ordinary course of business and (c) meet or exceed all of the applicable requirements and specifications, including good manufacturing practices.

Section 3.13. Relationships with Suppliers. From January 1, 2017 to the date hereof, no supplier of the Compound that is material to the Exploitation of the Compound has canceled or otherwise terminated, or provided notice to Seller of its intent, or, to Seller's Knowledge, threatened, to terminate its relationship with Seller with respect to the Compound, or, from January 1, 2017 to the date hereof, decreased or limited in any material respect, or provided notice to Seller of its intent, or, to Seller's Knowledge, threatened, to decrease or limit in any material respect, its sales of the Compound to Seller. As of the date hereof, to Seller's Knowledge, no supplier of the Compound that is material to the Exploitation of the Compound is subject to an ongoing audit by a Governmental Authority of such supplier's facilities or manufacturing processes.

Section 3.14. Brokers and Other Advisors. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the Contemplated Transactions based upon arrangements made by or on behalf of Seller or any of its Affiliates.

Section 3.15. Insurance. Seller and its Affiliates maintain such policies of insurance relating to the Business as are sufficient for compliance by Seller and its Affiliates with (i) all requirements of applicable Laws and (ii) all Assumed Contracts. Seller and each of its Affiliates has complied in all material respects with the provisions of each such policy under which it is an insured party. Neither Seller nor any of its Affiliates has been refused any insurance with respect to the Business, nor has its coverage been limited by any insurance carrier to which it has applied for insurance or with which it has carried insurance. To Seller's Knowledge, there are no existing claims under any insurance policy relating to the Business. No notice of cancellation or termination has been received with respect to any insurance policy relating to the Business.

Section 3.16. Adequate Consideration; Continued Solvency. The consideration to be received by Seller under this Agreement constitutes fair consideration and reasonable value for the Purchased Assets. Seller is (a) able to pay its debts as they become due, and (b) solvent and will be solvent immediately following the Closing. Seller is not engaged in business or a transaction, and it is not about to engage in business or a transaction, for which its remaining assets and capital are or will be insufficient. Seller does not intend to incur, or believe that it will incur, Liabilities that would be beyond its ability to pay as such Liabilities matured. Seller has not entered into this Agreement for the purpose of hindering, delaying or defrauding its creditors.

Section 3.17. Related Party Transactions. Schedule 3.17 describes any transaction between Seller or its Subsidiaries, on the one hand, and any current partner, director, officer, employee, manager, member or significant stockholder of Seller, on the other hand, in each case, related to the Business. No current partner, director, officer, employee, manager, member or significant stockholder of Seller owns or has any interest in the Purchased Assets, other than any indirect interest arising in connection with the ownership of Seller's securities.

Section 3.18. Anticorruption Matters.

(a) None of Seller, any of its Affiliates or, to Seller's Knowledge, any of their respective Representatives, distributors, sales intermediaries or other Third Parties acting on behalf of Seller or any of its Affiliates, in any way relating to the Business: (i) has taken any action in violation of any applicable anticorruption Law, including the U.S. Foreign Corrupt Practices Act ("FCPA") (15 U.S.C. § 78 dd-1 et seq.); or (ii) has corruptly, offered, paid, given, promised to pay or give, or authorized the payment or gift of anything of value, directly or indirectly, to any "Public Official", as defined in this Section 3.18, for purposes of (A) influencing any act or decision of any Public Official in his official capacity; (B) inducing such Public Official to do or omit to do any act in violation of his lawful duty; (C) securing any improper advantage; or (D) inducing such Public Official to use his or her influence with a government, Governmental Authority, or commercial enterprise owned or controlled by any Governmental Authority (including state-owned or controlled veterinary or medical facilities), in order to assist the Seller or any of its Affiliates or any Person related in any way to the Business, in obtaining or retaining business.

(b) None of the Seller's or any of its Affiliates' officers, directors, employees or agents acting on behalf of Seller are themselves Public Officials.

(c) For purposes of this Section 3.18, "Public Official" means: (i) any officer, employee or representative of any regional, Federal, state, provincial, county or municipal government or government department, agency, or other division; (ii) any officer, employee or representative of any commercial enterprise that is owned or controlled by a government, including any state-owned or controlled veterinary or medical facility; (iii) any officer, employee or representative of any public international organization, such as the African Union, the International Monetary Fund, the United Nations or the World Bank; (iv) any person acting in an official capacity for any government or Governmental Authority, enterprise, or organization identified above; and (v) any political party, party official or candidate for political office.

(d) To Seller's Knowledge, no investigation or review by any Governmental Authority with respect to the violation of any applicable anticorruption Law, including the FCPA, relating to the Business, is pending, or threatened. Neither Seller nor any of its Affiliates has received any notice from any Governmental Authority or other Person to the effect that Seller or its applicable Affiliate is not, or may not be, in compliance with any applicable anticorruption Law, including the FCPA, relating to the Business.

(e) Seller and its Affiliates have established and maintained an anticorruption compliance policy with respect to the Business appropriate to ensure compliance with applicable anticorruption Laws, including the FCPA.

Section 3.19. Export Controls and Sanctions Matters.

(a) None of Seller, any of its Affiliates or, to Seller's Knowledge, any of their respective Representatives, distributors, sales intermediaries or other Third Parties acting on behalf of Seller or any of its Affiliates, in any way relating to the Business, has taken any action in violation of any applicable export control Law, trade or economic sanctions Law, or antiboycott Law, in the United States or any other jurisdiction, including: the Arms Export Control Act (22 U.S.C.A. § 2278), the Export Administration Act (50 U.S.C. App. §§ 2401-2420), the International Traffic in Arms Regulations (22 C.F.R. 120-130), the Export Administration Regulations (15 C.F.R. 730 et seq.), the Office of Foreign Assets Control Regulations (31 C.F.R. Chapter V), the Customs Laws of the United States (19 U.S.C. § 1 et seq.), the International Emergency Economic Powers Act (50 U.S.C. § 1701-1706), the U.S. Commerce Department antiboycott regulations (15 C.F.R. 560), the U.S. Treasury Department antiboycott requirements (26 U.S.C. § 999), any other export control regulations issued by the agencies listed in Part 730 of the Export Administration Regulations, or any applicable non-U.S. Laws of a similar nature.

(b) None of Seller nor any Affiliate, director, officer, employee, distributor, agent, representative, sales intermediary or other third party acting on behalf of the Seller or any of its Affiliates, in any way relating to the Business, is listed on the U.S. Office of Foreign Assets Control "Specially Designated Nationals and Blocked Persons" or any other similar sanctions list.

(c) All export licenses, license exceptions and other consents, notices, waivers, approvals, orders, authorizations, registrations, declarations, classifications and filings required for the export, import and re-export of products, services, software and technology related to the Business ("Export Approvals") have been obtained; and no Export Approvals are required by the Laws identified in Section 3.19(a) for continued export, reexport or import of the Purchased Assets.

(d) To Seller's Knowledge, no investigation or review by any Governmental Authority with respect to violation of the Laws identified in Section 3.19(a) or any other similar Law relating to the Business, is pending, or threatened. Neither Seller nor any of its Affiliates has received any notice from any Governmental Authority or other Person to the effect that Seller or its applicable Affiliate is not, or may not be, in compliance with any of the Laws identified in Section 3.19(a) or any other similar Law relating to the Business.

(e) Seller and its Affiliates have established and maintained a compliance policy with respect to the Business appropriate to ensure compliance with the Laws identified in Section 3.19(a).

Section 3.20. No Other Representations and Warranties. (A) EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT, NONE OF SELLER OR ANY OTHER PERSON HAS MADE OR MAKES ANY REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, AT COMMON LAW OR OTHERWISE, WITH RESPECT TO SELLER OR THE PURCHASED ASSETS; AND (B) NONE OF SELLER OR ANY OTHER PERSON HAS MADE OR MAKES ANY REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, AT COMMON LAW OR OTHERWISE, AS TO THE ACCURACY, COMPLETENESS OR MATERIALITY OF ANY INFORMATION, DATA OR OTHER MATERIALS (WRITTEN OR ORAL) HERETOFORE FURNISHED TO BUYER AND ITS REPRESENTATIVES BY OR ON BEHALF OF SELLER AND ANY INFORMATION, DOCUMENTS OR MATERIAL MADE AVAILABLE TO BUYER IN THE DATA ROOM, MANAGEMENT PRESENTATIONS OR IN ANY OTHER FORM IN EXPECTATION OF THE CONTEMPLATED TRANSACTIONS, OTHER THAN (X) IN THE CASE OF CLAUSES (A) AND (B), IN THE CASE OF FRAUD, AND (Y) IN THE CASE OF CLAUSE (B), TO THE EXTENT ANY SUCH INFORMATION, DATA OR MATERIAL IS ITSELF THE SUBJECT OF A REPRESENTATION OR WARRANTY CONTAINED IN THIS AGREEMENT. SELLER ACKNOWLEDGES AND AGREES THAT NONE OF BUYER OR ANY OTHER PERSON HAS MADE OR MAKES ANY REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, AT COMMON LAW OR OTHERWISE, WITH RESPECT TO BUYER EXCEPT AS SET FORTH IN THIS AGREEMENT.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as set forth in this Article IV.

Section 4.1. Organization, Standing and Power. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the Pennsylvania and has all requisite corporate power and authority to carry on its business as presently conducted, except where the failure to be in good standing or have such power or authority, individually or in the aggregate, has not been and would not reasonably be expected to be material to Buyer, taken as a whole. Buyer is duly qualified or licensed to do business and is in good standing (in jurisdictions that recognize the concept of good standing) in each jurisdiction in which the nature of its business or the ownership, leasing or operation of its properties makes such qualification or licensing necessary, other than in such jurisdictions where the failure to be so qualified or licensed or to be in good standing, individually or in the aggregate, has not been and would not reasonably be expected to be material to Buyer.

Section 4.2. Authority; Noncontravention. (a) Buyer has all requisite corporate power and authority to execute and deliver this Agreement and the Related Documents and to consummate the Contemplated Transactions. The execution and delivery of this Agreement and the Related Documents by Buyer and the consummation by Buyer of the Contemplated Transactions have been duly authorized by all necessary corporate action on the part of Buyer and no other corporate proceedings on the part of Buyer are necessary to authorize this Agreement, the Related Documents or to consummate the Contemplated Transactions. Each of this Agreement and the Related Documents has been duly executed and delivered by Buyer (or an Affiliate thereof) and, assuming the due authorization, execution and delivery by Seller, constitutes a legal, valid and binding obligation of Buyer (or an Affiliate thereof), enforceable against Buyer (or an Affiliate thereof) in accordance with its terms, subject to bankruptcy, insolvency, moratorium, reorganization or similar Laws affecting the rights of creditors generally and the availability of equitable remedies.

(b) The execution and delivery of this Agreement and the Related Documents by Buyer do not, and the consummation of the Contemplated Transactions and compliance by Buyer with the provisions of this Agreement and the Related Documents will not, conflict with, or result in any violation or breach of, or default under (with or without notice or lapse of time, or both), or give rise to a right of, or result in, termination, cancellation or acceleration of any obligation or to the loss of a benefit under, or result in the creation of any Lien in or upon any of the properties or other assets of Buyer under (i) the certificate of incorporation or bylaws of Buyer, (ii) any Contract to which Buyer is a party or any of its respective properties or other assets is subject, or (iii) any (A) statute, ordinance, rule, regulation or other Law applicable to Buyer or its properties or other assets or (B) Order applicable to Buyer or its properties or other assets, except in the cases of clauses (ii) and (iii), where the conflict, violation, breach, default, termination, cancellation, acceleration or creation of a Lien, individually or in the aggregate, would not reasonably be expected to prevent, materially impede or materially delay the consummation by Buyer of the Contemplated Transactions (including the payments required to be made pursuant to Article II).

(c) No Governmental Consent is required by or with respect to Buyer in connection with the execution and delivery of this Agreement or any Related Document by Buyer or the consummation by Buyer of the Contemplated Transactions, except for the receipt, termination or expiration, as applicable, of approvals or waiting periods required under any applicable antitrust, competition, fair trade or similar Laws.

Section 4.3. Capital Resources. Buyer has immediately available funds sufficient to consummate the Contemplated Transactions (including the payments required to be made pursuant to Article II) on the terms contemplated by this Agreement including the payment of all fees and expenses payable by Buyer in connection with the Contemplated Transactions.

Section 4.4. Litigation. There is no Action pending or, to the actual knowledge of Buyer's officers, threatened before or by any Governmental Authority that, if successful, could reasonably be expected to result in restraining, enjoining or otherwise preventing the consummation by Buyer of the Contemplated Transactions. There is no outstanding Order of any Governmental Authority against Buyer that could reasonably be expected to result in restraining, enjoining or otherwise preventing the consummation by Buyer of the Contemplated Transactions.

Section 4.5. Brokers and Other Advisors. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the Contemplated Transactions based upon arrangements made by or on behalf of Buyer or any of its Affiliates.

Section 4.6. Independent Investigation. Buyer has conducted its own independent investigation, review and analysis of the Purchased Assets and the Compound Program and acknowledges that it has been provided access to the personnel, properties, assets, premises, books and records, and other documents and data of Seller and its Affiliates for such purpose.

ARTICLE V

ADDITIONAL AGREEMENTS

Section 5.1. Conduct of Business. (a) Except as set forth on Schedule 5.1, from the date of this Agreement until the Closing Date, Seller shall, and shall cause its Affiliates to, (A) maintain and preserve in all respects the Purchased Assets, (B) conduct activities with respect to the Business in the ordinary course of business consistent with past practice and (C) comply in all material respects with all Laws and Permits applicable to the Business.

(b) Except as set forth on Schedule 5.1 or as otherwise required by Law, without limiting the generality of the foregoing, from the date of this Agreement until the Closing Date, Seller shall not, and shall cause its Affiliates not to (without the prior written consent of Buyer, which shall not be unreasonably withheld, delayed or conditioned (it being understood that withholding, delaying or conditioning consent for any of the actions specified in clauses (iii) or (xi) below shall not, under any circumstances, be considered to be unreasonable)):

(i) (A) incur, create, assume or permit the incurrence, creation or assumption of any Lien (other than Permitted Liens) with respect to the Purchased Assets, (B) dispose of any of the Purchased Assets, other than Biological Materials in the ordinary course of business, (C) dispose of any of the Inventory, other than in the ordinary course of business or (D) waive, release, sell, assign, encumber, impair, fail to diligently maintain, license or transfer any material right, title or interest in or to any Purchased Asset;

(ii) (A) sell, assign, license, grant any non-assertion covenant with respect to, encumber, impair, abandon, fail to diligently maintain, transfer or otherwise dispose of, any Seller Intellectual Property, (B) amend, waive, cancel, permit to lapse, or modify any of Seller's rights in or to the Seller Intellectual Property, or (C) disclose or agree to disclose to any Person, other than Representatives of Buyer, any Trade Secrets or other confidential information used or held for use in connection with the Business;

(iii) except as required by Law as a result of activities conducted by Seller prior to the date of this Agreement, (A) make any submissions (other than filings with respect to Seller's Patents in the ordinary course of business consistent with past practice) to any Governmental Authority relating to the Business, including with respect to the conduct or design of clinical trials sponsored or proposed by Seller or any of its Affiliates involving the Compound or any Product, (B) make any submissions to, or correspond with, any domestic or foreign institutional review board, privacy board or ethics committee regarding a clinical trial sponsored or proposed by Seller or any of its Affiliates or involving the Compound or any Product, (C) publish any Data or the results of any ongoing studies regarding the Compound or any Product, including the results of investigator-initiated studies or (D) otherwise initiate, support, facilitate or encourage any further clinical study involving the Compound or any Product;

(iv) compromise or settle any Action if the terms of such compromise or settlement would be binding on Buyer or any of its Affiliates, or any Purchased Assets, after the Closing;

(v) except as may be required under any Business Employee Benefit Plan as in effect on the date hereof or by applicable Law, (A) grant to any Business Employee any increase in compensation or benefits or any new or additional compensation (including equity-based awards), (B) enter into, adopt, amend or terminate any Business Employee Benefit Plan with respect to the Business Employees, including any employment or severance agreement, (C) take any action to accelerate vesting or payment of, or otherwise fund or secure payment of, any compensation payable to a Business Employee, (D) make any loans or cash advance to any Business Employees or (E) enter into any collective bargaining or other Contract with any labor organization or representative that covers the Business Employees;

(vi) (A) terminate any Business Employee other than for cause or due to death or disability or (B) alter the duties and responsibilities or position of any Business Employee in a manner that would adversely impact such Business Employees' knowledge of the Compound Program, including the Compound and all Products and the potential Exploitation thereof;

(vii) (A) terminate, amend or modify, or waive any material right under, or fail to perform in all material respects all obligations under, any Assumed Contract, Permit or other document or instrument relating to or affecting the Business or (B) enter into any material Contract, document or instrument relating to or affecting the Business;

(viii) to the extent any such action would result in a Tax Lien upon any of the Purchased Assets, (A) make, revoke or change any material Tax election, (B) adopt or change any Tax accounting method or period, (C) file any amended Tax Return with respect to a material amount of Taxes, (D) enter into any closing agreement or settlement with respect to a material amount of Taxes, (E) settle any claim or assessment for a material amount of Taxes, (F) consent to any extension or waiver of the statute of limitations period applicable to any such Tax claim or assessment or (G) surrender any right to claim a refund of a material amount of Taxes;

(ix) fail to maintain true, accurate and complete Books and Records;

(x) fail to keep in force and effect insurance in respect of the Purchased Assets comparable in amount and scope of coverage to that maintained as of the date of this Agreement;

(xi) use or reference the Compound in connection with the development of any Existing Antibody or New Antibody; or

(xii) agree to or authorize, or commit to agree to or authorize, in writing or otherwise, any action that would conflict with the obligations set forth in clauses (i) through (xi) above.

Section 5.2. Commercially Reasonable Efforts.

(a) Each of the Parties agrees to use its respective commercially reasonable efforts to take, or cause to be taken, all actions, to file, or cause to be filed, all documents and to do, or cause to be done, all things necessary, proper or advisable to consummate the Contemplated Transactions as promptly as practicable, including (i) the obtaining of all necessary Governmental Consents and (ii) the execution and delivery of any additional documents or instruments necessary to consummate the Contemplated Transactions.

(b) In connection with and without limiting the foregoing, Seller and Buyer shall (or shall cause their respective Affiliates to) (i) make any appropriate filings, if necessary or advisable (in the opinion of Buyer), pursuant to any applicable antitrust, competition, fair trade or similar Laws with respect to the Contemplated Transactions as promptly as practicable and (ii) supply as promptly as practicable and advisable to the appropriate Governmental Authorities any additional information and documentary material that may be requested pursuant to any such applicable antitrust, competition, fair trade or similar Laws. All antitrust filings to be made shall be made in substantial compliance with the requirements of the applicable antitrust, competition, fair trade or similar Laws, as applicable. Each Party shall cooperate with the other Party to the extent necessary to assist the other Party or its applicable Affiliate in the preparation of such filing and to promptly amend or furnish additional information thereunder. Each Party shall use commercially reasonable efforts to furnish to outside counsel for the other all information required for any filing, form, declaration, notification, registration and notice, other than confidential or proprietary information not directly related to the Contemplated Transactions, and to keep the other Party reasonably informed with respect to the status of each Governmental Consent being sought in connection with the Contemplated Transactions and the material communications between such Party and the applicable Governmental Authority. If any objections are raised or asserted with respect to the Contemplated Transactions under applicable Law or if any Action is instituted (or threatened to be instituted) by any applicable Governmental Authority or any private party challenging any of the Contemplated Transactions as being in violation of any applicable Law or which would otherwise prevent, impede or delay the consummation of the Contemplated Transactions, the Parties shall use their commercially reasonable efforts to resolve any such objections or Actions so as to permit consummation of the Contemplated Transactions as soon as reasonably practicable. Nothing in this Agreement shall be deemed to require Buyer to agree to, or proffer to, divest, license or hold separate any rights or other assets or any portion of any business of Buyer or any of its Affiliates or any of the Purchased Assets.

Section 5.3. Exclusivity. From the date of this Agreement until the earlier of the Closing Date and the termination of this Agreement, Seller shall not, and shall not permit any of its Affiliates or its or their Representatives to, directly or indirectly, solicit, initiate, enter into or conduct discussions concerning, or exchange information (including by way of furnishing information concerning Seller, its Affiliates or the Purchased Assets) or enter into any negotiations concerning, provide information regarding, respond to any inquiries, or solicit, receive, entertain or agree to any proposals for, the acquisition, directly or indirectly, of any of the Purchased Assets.

Section 5.4. Access and Information; Advice of Changes.

(a) From the date of this Agreement until the earlier of the Closing Date and the termination of this Agreement, Seller shall, and shall cause its Affiliates to, provide Buyer, its Affiliates and its and their Representatives, upon reasonable notice, reasonable access during normal business hours to the Books and Records, to the operations and properties related to the Purchased Assets and to Representatives of the Sellers involved in the Business; provided, however, that Seller and its Affiliates may withhold any document or information to the extent Seller believes in good faith, after consultation with counsel, that disclosure of such document or information would (i) jeopardize the attorney-client privilege of such party or (ii) contravene any applicable Laws; provided further that, in each case of clauses (i) and (ii), that Seller and its Affiliates will use commercially reasonable efforts to provide such documents or information in a manner that does not so jeopardize attorney-client privilege or contravene any applicable Law. Buyer acknowledges and agrees that any information provided to it or any of its Representatives pursuant to this Section 5.4 is subject to the confidentiality obligations set forth in the Confidentiality Agreement. If any of the documents or information furnished pursuant to this Section 5.4 includes documents or information subject to the attorney-client privilege or attorney work-product doctrine or any other applicable privilege concerning pending or threatened Actions or governmental investigations, each Party understands and agrees that the Parties have a commonality of interest with respect to such matters, and it is the desire, intention and mutual understanding of the Parties that the sharing of such documents or information is not intended to, and shall not, waive or diminish in any way the confidentiality of such documents or information, nor its continued protection under the attorney-client protection, attorney work-product doctrine, or other applicable privilege, and shall remain entitled to such protection under those privileges, this Agreement, and the joint defense doctrine.

(b) From the date of this Agreement until the earlier of the Closing Date and the termination of this Agreement, Buyer and Seller shall promptly advise the other Party in writing of (i) the occurrence, or failure to occur, of any event which could reasonably be expected to cause any representation or warranty made by such Party contained in this Agreement to become untrue or incorrect or (ii) the failure of such Party to comply with or perform in any material respect any covenants, agreements or obligations required to be complied with or performed by such Party under this Agreement, in any such case to the extent such Party or its officers and directors have actual knowledge of any such failure, occurrence or event. For the avoidance of doubt, no disclosure pursuant to this Section 5.4 shall be deemed to cure any breach of any representation, warranty, covenant, agreement or obligation or affect any determination as to whether any of the conditions set forth in Article VI have been satisfied.

(c) Subject to Section 5.4(a), from the date of this Agreement until the earlier of the Closing Date and the termination of this Agreement, Buyer and Seller shall reasonably cooperate and make such arrangements as are necessary to ensure that all applicable safety data relating to the Business will transfer to Buyer upon the Closing.

Section 5.5. Confidentiality.

(a) Each of Buyer and Seller acknowledges that the information provided to them in connection with this Agreement and the consummation of the Contemplated Transactions is subject to the terms of the Confidentiality Agreement. Effective upon, and only upon, the Closing, the Confidentiality Agreement shall terminate with respect to information included in or related to the Business.

(b) From and after the Closing, Seller will, and will cause its Affiliates and its and their Representatives, to keep confidential, not disclose to any Person and not use any non-public, confidential or proprietary information in its possession, under its Control or to which it has access relating to the Business; provided that Seller, its Affiliates and its and their Representatives may use any such information constituting an Excluded Asset in connection with business activities not constituting the Business. The obligations of Seller under this Section 5.5(b) shall not apply to information to the extent such information (A) becomes generally available to the public without breach of Seller's obligations under Section 5.1 or this Section 5.5(b) or (B) is required to be disclosed by Law or any Order; provided, however, that in the case of the foregoing clause (B), to the extent not prohibited by such Law or Order, Seller shall notify Buyer as early in advance of such disclosure as is practicable to allow Buyer to take appropriate measures (and Seller shall reasonably cooperate, at the expense of Buyer, in the taking of such measures) to preserve the confidentiality of such information.

Section 5.6. Non-Competition; Right of First Negotiation.

(a) Non-Competition. Seller agrees that, from the Closing Date to the date that is five years following the Closing (the "Restricted Period"), none of Seller or any of its Affiliates (now existing or hereafter incorporated, formed or otherwise organized) shall, alone or in conjunction with others, directly or indirectly, seek to Exploit, conduct clinical studies with respect to, develop, manufacture or commercialize any product containing or comprising a monoclonal antibody that targets human Interleukin 1 alpha.

(b) Seller Right to Develop New Antibody. Notwithstanding anything to the contrary herein, the restrictions set forth in Section 5.6(a) shall not apply to the development of any monoclonal antibody that targets Interleukin 1 alpha that satisfies all of the following characteristics (any such monoclonal antibody, a "New Antibody"):

(i) such New Antibody is identified and developed as a result of a *de novo* discovery, which includes **[*****]** and those developed in the future by Seller or any of its Affiliates without the use of or reference to **[*****]**;

(ii) such New Antibody qualifies as a new molecular entity under FDA regulations and guidelines; and

(iii) **[*****]**.

(c) Additional Seller and Buyer Obligations.

(i) Notwithstanding anything to the contrary set forth in Section 5.6(b), Seller shall not, and shall cause each of its Affiliates not to, directly or through any Third Party, develop, seek to Exploit, conduct clinical studies with respect to, manufacture or commercialize any product containing or comprising a New Antibody for use in a Specified Indication; provided that the restriction in this Section 5.6(c)(i) shall not apply with respect to any indication that becomes a Specified Indication after a product containing or comprising a New Antibody has received the Required Commercialization Authorizations with respect to such indication in (A) the **[*****]** or (B) **[*****]** of the **[*****]**.

(ii) Seller shall, and shall cause its Affiliates to, grant Buyer exclusive rights in Dermatology to any Seller Patents covering a New Antibody until the date that is five (5) years after the Closing Date solely for purposes of ensuring that any third-party product containing such New Antibody will not be manufactured or commercialized for use in a Dermatology indication.

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

(iii) Notwithstanding anything to the contrary set forth in Section 5.6(b), (A) until **[*****]** Seller shall not, and shall cause each of its Affiliates not to, file any IND with respect to a New Antibody, (B) until **[*****]** Buyer shall not, and shall cause each of its Affiliates (and their respective licensees) not to, **[*****]** and (C) until **[*****]** Buyer shall not, and shall cause each of its Affiliates (and their respective licensees) not to, **[*****]** (it being understood that clauses (B) and (C) shall not prevent Buyer from undertaking any **[*****]**.

(iv) Seller shall not, and shall cause its Affiliates not to, market, detail or promote any product containing or comprising a New Antibody to dermatologists for any indication.

(v) Seller shall deliver to Buyer (A) on the first day of each calendar year during the Restricted Period, a written certification from an authorized executive officer of Seller certifying Seller's and its Affiliates' compliance with the provisions of this Section 5.6 and (B) following the designation of a New Antibody as a lead candidate by Seller and the availability of sufficient binding and sequencing data in respect of such New Antibody, but prior to the commencement of any clinical trials for such New Antibody, a written certification from a confidential Third Party auditor mutually acceptable to Buyer and Seller (which audit shall be at Seller's sole expense) certifying that any New Antibody in respect of which Seller or any of its Affiliates has filed an IND was identified and developed in compliance with Section 5.6(b).

(vi) In the event that any Third Party (including any licensee) acquires rights to a New Antibody or New Antibody Products, Seller shall cause such Third Party to be bound by the requirements of Sections 5.6(c)(i), 5.6(c)(ii), 5.6(c)(iii) and 5.6(c)(iv) and 5.6(c)(v)(A).

(vii) In the event that any Third Party (including any licensee) acquires rights to the Compound, Buyer shall cause such Third Party to be bound by the requirements of Section 5.6(c)(iii)(B) and Section 5.6(c)(iii)(C).

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

(d) Buyer Right of First Negotiation. If Seller or any of its Affiliates commences development of a New Antibody during the Restricted Period, Seller and its Affiliates shall not be permitted to sell, license or otherwise transfer control of (including pursuant to a transfer of control of Seller), or commence or participate in negotiations to, or enter into any agreement to, sell, license or otherwise transfer control of (including pursuant to a transfer of control of Seller), any rights to Exploit such New Antibody (the "Restricted Actions"), including any rights in respect of the development or commercialization of any pharmaceutical product containing such New Antibody (any such product, including all dosage forms, presentations, formulations and line extensions thereof, a "New Antibody Product"), to any Third Party (including any rights to partner with Seller or any of its Affiliates) unless Seller first provides Buyer with a right of first negotiation on the following terms and conditions:

(i) If Seller or any of its Affiliates determines to seek to sell, license or otherwise transfer control (including pursuant to a transfer of control of Seller) of any rights to Exploit such New Antibody, including any rights in respect of the development or commercialization of any New Antibody Product, or receives any *bona fide* offer in respect of such New Antibody, any New Antibody Product or control of Seller (any potential counterparty to such transactions, a "Counterparty"), Seller shall provide Buyer with written notice of such determination or such offer (an "Offer Notice"), which such Offer Notice shall (A) state whether such determination or offer is in respect of such New Antibody or in respect of one or more specific New Antibody Products (and shall identify such New Antibody or New Antibody Products, as applicable) and (B) in the case of a *bona fide* offer in respect of such New Antibody or New Antibody Product or control of Seller, shall provide reasonable detail regarding such offer.

(ii) Within **[*****]** days of receipt of any Offer Notice **[*****]** (the "Offer Period"), Buyer may deliver to Seller a non-binding, good faith written notice expressing Buyer's desire to negotiate in respect of such New Antibody, such New Antibody Products or control of Seller, as applicable (a "Negotiation Notice"). If Buyer delivers such Negotiation Notice within the Offer Period, Buyer and Seller shall negotiate in good faith, for **[*****]** days after the delivery of such Negotiation Notice **[*****]** (the "Negotiation Period"), the terms of an agreement under which Buyer would acquire rights to such New Antibody or such New Antibody Products or to acquire control of Seller.

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

(iii) If (A) Buyer does not provide Seller with a Negotiation Notice within the Offer Period or (B) Buyer does provide Seller with such Negotiation Notice within the Offer Period, but the Parties are unable to, after good faith negotiation, reach agreement during the Negotiation Period, then Seller may take any of the Restricted Actions in respect of such New Antibody, such New Antibody Products or control of Seller; provided, that, if Seller delivers an Offer Notice which states that such Offer Notice is in respect of one or more specific New Antibody Products, Seller shall not be permitted to take any of the Restricted Actions with respect to rights that are not exclusively related to such New Antibody Products without first delivering a new Offer Notice covering such other rights and providing for a new Offer Period and, upon delivery of a Negotiation Notice, a new Negotiation Period.

(iv) During any Offer Period and/or Negotiation Period, Seller will, and will cause its Affiliates to, reasonably cooperate with Buyer and its Representatives to facilitate Buyer's diligence of such New Antibody or New Antibody Product (or of Seller itself, as applicable), including by (A) furnishing to Buyer and its Representatives all information concerning such New Antibody or New Antibody Product or the assets, properties, operations and businesses of Seller, as applicable, as Buyer or its Representatives may reasonably request and (B) substantially concurrently with the delivery of the Offer Notice, and thereafter on a reasonably current basis, furnishing to Buyer and its Representatives all diligence materials that are provided to a Counterparty, subject, in each case, to Buyer and its Representatives entering into customary agreements or other arrangements with respect to the confidentiality of any such diligence materials or other information.

(v) If within **[*****]** days of the expiration of the Negotiation Period Seller does not enter into a definitive agreement with a Third Party pursuant to which such Third Party agrees to acquire rights to the New Antibody or New Antibody Products or control of Seller that, in each case was the subject of the applicable Offer Notice, Seller shall again comply with the requirements of this Section 5.6(d) prior to taking any of the Restricted Actions in respect of such New Antibody or such New Antibody Products or a transfer of control of Seller.

(vi) Notwithstanding anything to the contrary set forth herein, this Section 5.6(d) shall not apply to the entry by Seller or its Affiliates into any subcontract or similar agreement with a Third Party to subcontract to such Third Party the research or development of a New Antibody or New Antibody Product, so long as Seller or its Affiliates retains the exclusive right to commercialize the New Antibody or the New Antibody Product (and the exclusive right to the economic benefits thereof).

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

(e) Acknowledgments, Interpretation and Validity.

(i) Seller agrees and acknowledges that the covenants in this Section 5.6 are reasonable and valid in all respects (including with respect to the subject matter, Restricted Period, and geographical area described in Section 5.6(a)) and are necessary to protect the interests of Buyer in the Business and in the confidential information acquired by Buyer, and such covenants represent only a limited restraint. Further, Seller acknowledges that, without the restrictions contained in this Section 5.6, the benefits of the Contemplated Transactions could be devalued, lost or circumvented, particularly in light of the nature of the Business and the ongoing development of the Compound, and that Buyer would not have entered into this Agreement without the restrictions contained in this Section 5.6.

(ii) Seller acknowledges and agrees that the provisions of this Section 5.6 are necessary and reasonable to protect Buyer in the conduct of its business and are a material inducement to Buyer's execution and delivery of this Agreement and its willingness to enter into the Contemplated Transactions.

(iii) It is the desire and intent of the Parties that this Section 5.6 will be enforced to the fullest extent permissible under the Laws applied in each jurisdiction in which enforcement is sought. If any restriction set forth in this Section 5.6 is found by any court of competent jurisdiction to be unenforceable for any reason (*e.g.*, because it extends for too long a period of time, over too great a range of activities or in too broad a geographic area), this Section 5.6 shall be interpreted to extend over the maximum period of time, range of activities or geographic area as to which it may be enforceable. The agreements contained in this Section 5.6 shall each constitute a separate agreement independently supported by good and adequate consideration. For the avoidance of doubt, the Parties hereby acknowledge that Seller will benefit substantially from the consummation of the Contemplated Transactions and that the consideration that Seller will receive upon such consummation is adequate to support Seller's agreement to be bound by the covenants set forth herein.

(f) Remedies. In accordance with Section 9.8(c), Buyer will be entitled to injunctive or other equitable relief to enforce the provisions hereof, in addition to such other remedies to which Buyer may be entitled, including the recovery of money damages.

(g) Extensions of Limitations.

(i) If Seller or any of its Affiliates violates any term or provision of this Section 5.6, the duration set forth in Section 5.6(a) shall automatically be extended as against Seller and its subsidiaries for a period equal to the periods during which Seller or such subsidiary shall have been in violation of this Section 5.6.

(ii) If Seller or any of its Affiliates fails to comply with Buyer's due diligence requests pursuant to Section 5.6(d)(iv) above reasonably promptly following the request therefor, the Offer Period or Negotiation Period, as applicable, shall automatically be extended by a number of days equal to the delay by Seller or any of its Affiliates in providing the requested materials.

Section 5.7. Other Agreements.

(a) From the date hereof until the Closing Date, Buyer and Seller shall use commercially reasonable efforts to negotiate in good faith and enter into a Quality Assurance Agreement, in form and substance reasonably acceptable to each of Buyer and Seller (the "Quality Assurance Agreement").

(b) If the Parties determine that a pharmacovigilance agreement is necessary, Buyer and Seller shall use commercially reasonable efforts to negotiate in good faith and enter into such a pharmacovigilance agreement, in form and substance reasonably acceptable to each of Buyer and Seller, as promptly as reasonably practicable following such determination.

(c) On and after the Closing Date, Seller shall not, and shall cause its Affiliates not to, (i) incur, create, assume or permit the incurrence, creation or assumption of any Lien (other than Permitted Liens) with respect to any Inventory or (ii) use, transfer, sell, assign or otherwise dispose of any Inventory, other than, in the case of this clause (ii), in accordance with the terms of the Clinical Manufacturing Agreement.

(d) As promptly as practicable (and in any event, no later than 30 days) following the date hereof, Seller shall provide Buyer with true, accurate and complete copies of all Contracts (i) to which Seller or any of its Affiliates is a party or by which Seller or any of its Affiliates is bound, in either case, that are related to the Business or (ii) to which any of the Purchased Assets are subject, in each of cases (i) and (ii) that are not Assumed Contracts or Excluded Contracts (the "Reviewable Contracts"). From the date hereof until the date that is six months following the Closing Date, if Buyer determines in good faith that any of the Reviewable Contracts are primarily related to or material to the Business or are reasonably necessary to conduct the Business, Buyer may designate such Reviewable Contracts as Assumed Contracts by delivering written notice to Seller of such designation and, upon delivery of such notice, such Reviewable Contracts shall be deemed to be Assumed Contracts for all purposes hereunder. If delivery of any such notice is made on or after the Closing Date, the Reviewable Contracts designated in such notice shall be deemed, subject to Section 2.6, to have been assigned or transferred under this Agreement as of the date of delivery of such notice (it being understood that the date of the assignment or transfer, taking into account the operation of Section 2.6, if applicable, shall be deemed the "Transfer Date" with respect to such Reviewable Contracts).

Section 5.8. Certain Tax Matters.

(a) Transfer Taxes. All recordation, transfer, documentary, excise, sales, value added, use, stamp, conveyance or other similar Taxes, duties or governmental charges, and all recording or filing fees or similar costs, imposed or levied by reason of, in connection with or attributable to this Agreement, the Related Documents or the Contemplated Transactions (collectively, "Transfer Taxes") shall be the borne solely by Buyer; provided, that any Transfer Taxes that are not recoverable by Buyer shall be borne **[*****]**. Seller (or an Affiliate of Seller) shall prepare, or cause to be prepared, all Tax Returns required to be filed in connection with such Transfer Taxes, and Buyer shall provide any information that is reasonably requested by Seller in connection with the preparation of such Tax Returns. Buyer and Seller shall reasonably cooperate in providing such certificates or other documentation as may be necessary or advisable to avoid the collection and payment of Transfer Taxes that would otherwise be due and payable absent the provision of such documentation.

(b) Allocation of Taxes. In the case of a taxable period that includes, but does not end on, the Closing Date (a 'Straddle Period"), (a) Taxes imposed on a periodic basis (such as real, personal and intangible property taxes) for the Pre-Closing Tax Period shall be equal to the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days during the Straddle Period that are in the Pre-Closing Tax Period and the denominator of which is the number of days in the Straddle Period; and (b) Taxes (other than Taxes described in clause (a)) for any Pre-Closing Tax Period shall be computed as if such taxable period ended as of the close of business on the Closing Date.

(c) Withholding. Notwithstanding anything in this Agreement to the contrary, Buyer and its Affiliates shall be entitled to deduct and withhold from any amount payable pursuant to this Agreement such amounts as Buyer believes in good faith are required to be deducted and withheld with respect to the making of such payment under any provision of federal, state or local (in each case, whether domestic or foreign) Tax Law and pay such amounts over to the appropriate Taxing Authority. If Buyer determines that an amount is so required to be deducted and withheld on its payment of the Purchase Price, Buyer shall use commercially reasonable efforts to provide to Seller, at least three days prior to the expected Closing Date, written notice of its intent to deduct and withhold on such payment, which notice shall include a reasonably detailed calculation of the amount to be deducted and withheld and the applicable provision of federal, state, local or non-U.S. Tax Law pursuant to which such deduction and withholding is required. Upon delivery of such notice, Buyer shall allow Seller a reasonable opportunity to provide, prior to the expected Closing Date, such forms or other evidence that would reduce or eliminate the amounts required to be deducted and withheld from such payment. To the extent that amounts are deducted and withheld and paid over to the appropriate Taxing Authority pursuant to this Section 5.8(c), such amounts shall be treated for all purposes of this Agreement as having been paid to the party in respect of which such deduction and withholding was made.

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

(d) Cooperation and Exchange of Information. Each of Seller and Buyer shall, and shall cause their respective Affiliates to, (i) provide the other with such assistance as may reasonably be requested by the other Party in connection with the preparation of any Tax Return, audit or other examination by any Taxing Authority or Action relating to liability for Taxes in connection with the Purchased Assets, (ii) retain and provide the other with any records or other information that may be relevant to such Tax Return, audit or examination, Action or determination and (iii) provide the other with any final determination of any such audit or examination, Action or determination that affects any amount required to be shown on any Tax Return of the other for any period.

(e) Tax Treatment of Payments. Except to the extent otherwise required by Law, Seller and Buyer shall, and shall cause their Affiliates to, treat any payment under Section 2.5 and Article VII as an adjustment to the Purchase Price for Tax purposes.

Section 5.9. Public Announcements.

(a) Neither Buyer nor Seller, nor any Affiliate of either Party, shall issue any press release or otherwise make any public statement with respect to the provisions of this Agreement or the Contemplated Transactions without the prior written consent of the other Party. Notwithstanding anything to the contrary in this Agreement or any Related Document, either Party may issue a press release or make a public statement with respect to the Contemplated Transactions without the consent of the other Party as may be required by Law or the rules and regulations of any applicable securities exchange or market. If any Party proposes to issue a press release or make a public statement with respect to the Contemplated Transactions pursuant to this Section 5.9, it will provide copies of such press release or public statement to the other Party before such press release or public statement is made, unless this would be in breach of any Law or the rules and regulations of any applicable securities exchange or market, in which case a copy of such press release or public statement will be provided to the other Party as soon as reasonably practicable or in accordance with such Law, rules or regulations.

(b) From and after the Closing, except as required by Law or the rules and regulations of any applicable securities exchange or market, neither Seller nor any of its Affiliates shall issue any press release or otherwise make any public statement with respect to the Business, other than with respect to Patents licensed to Seller for indications excluding Specified Indications, without the consent of Buyer.

Section 5.10. Employee Matters.

(a) Offers of Employment. Seller shall deliver to Buyer a final, true, accurate and complete version of Schedule 3.10(h) no later than 15 Business Days prior to the Closing and, no later than five Business Days prior to the Closing, Buyer or one of its Affiliates shall offer employment commencing as of immediately following the Closing to each active Business Employee on terms and conditions consistent with this Section 5.10; provided that, in the event any individual is identified as a Business Employee in accordance with this Agreement less than 15 Business Days prior to the Closing, such offer shall be made within 10 Business Days of Seller delivering updated Schedules 1.1(a) and 3.10(h) to Buyer that include such individual. Any such offers made pursuant to this Section 5.10 shall be contingent on the Business Employee's satisfaction of Buyer's typical employment screening processes. Seller and its Affiliates shall encourage the Business Employees to accept the offers of employment pursuant to this Section 5.10. Each Business Employee who accepts an offer of employment pursuant to this Section 5.10 and becomes employed by Buyer or one of its Affiliates pursuant to this Section 5.10 shall be referred to herein as a "Transferred Business Employee." In the case of any individual who becomes a Transferred Business Employee following the Closing Date, all references in this Agreement (i) to the Closing Date (including in Section 5.1) shall be deemed to be references to the date that such individual becomes a Transferred Business Employee and (ii) to the Transfer Time shall be deemed to be references to 12:01 a.m., local time, on the date that such individual becomes a Transferred Business Employee.

(b) Comparability. For a period of not less than 12 months following the applicable Transfer Time, each Transferred Business Employee shall receive during their continued employment with Buyer and its Affiliates: (i) at least the same base salary or wage rate and annual cash incentive opportunities as those provided to such Transferred Business Employee immediately prior to the Transfer Time; and (ii) other compensation and employee benefits that are substantially comparable in the aggregate to either, at Buyer's election, (A) the other compensation and employee benefits (excluding any equity-based compensation, defined benefit pension or post-employment health or welfare benefits, and retention, change in control or other similar payments or benefits) provided to such Transferred Business Employee immediately prior to the Transfer Time, or (B) the other compensation and employee benefits provided to similarly situated new hires of Buyer's ultimate parent entity ("Parent") and its Affiliates.

(c) Service Credit. Effective immediately after the applicable Transfer Time and thereafter, Buyer shall provide, or shall cause its Affiliates to provide, that periods of employment with Seller (including any current or former Affiliate of Seller or any predecessor of Seller) shall be taken into account (i) for purposes of vesting (but not eligibility or benefit accrual) under Parent's defined benefit pension plan, (ii) for purposes of eligibility and benefit accrual for vacation under Parent's vacation program, (iii) for purposes of eligibility to participate in any health or welfare plan maintained by Parent (other than any post-employment health or post-employment welfare plan) and Parent's 401(k) plan, and (iv) for benefit accrual purposes under Parent's severance plan (in the case of each of clauses (i), (ii), (iii) and (iv), solely to the extent that (A) such periods of employment are taken into account under analogous Business Employee Benefit Plans before the applicable Transfer Time, to the extent applicable, and (B) Parent makes such plan or program available to Transferred Business Employees, and not in any case where credit would result in duplication of benefits).

(d) Welfare Benefits. With respect to any welfare plan maintained by Parent or any of its Affiliates in which a Transferred Business Employee is eligible to participate after the Transfer Time, Parent shall, and shall cause its Affiliates to, (i) waive all limitations as to preexisting conditions and exclusions with respect to participation and coverage requirements applicable to such employee to the extent such conditions and exclusions were satisfied or did not apply to such employee under the welfare plans of Seller and its Affiliates prior to the applicable Transfer Time and (ii) provide each Transferred Business Employee with credit for any co-payments and deductibles paid prior to the applicable Transfer Time, for the calendar year in which such Transfer Time occurs, in satisfying any analogous deductible or out-of-pocket requirements to the extent applicable under any such plan. For the avoidance of doubt, neither Parent nor any of its Affiliates shall be required to take any action to the extent Parent determines that such action could make a Transferred Business Employee (or eligible dependent) ineligible for a benefit (for example, if credit for past contributions would make the Transferred Business Employee ineligible for health savings account contributions from Parent).

(e) Accrued Amounts. As soon as practicable following the Transfer Time, Seller shall pay all earned but unpaid amounts due to any Transferred Business Employee and shall compensate each Transferred Business Employee for all vacation and other paid time off that have accrued and not been used or paid prior to the applicable Transfer Time. Buyer and its Affiliates will cooperate in good faith with any Transferred Business Employees with respect to any vacation commitments communicated by such Transferred Business Employees to Seller in accordance with Seller's standard operating procedures and/or vacation policies prior to the applicable Transfer Time in respect of periods occurring subsequent to the Transfer Time; it being understood that any such vacation commitments ultimately honored by Buyer and its Affiliates shall count against the applicable Transferred Business Employee's paid-time-off accrued during his or her service with Buyer and its Affiliates, or shall be unpaid.

(f) Employees on Leave. With respect to any Business Employee who, as of the Closing Date, is on approved leave of absence from work with Seller and its Affiliates and is expected to return to active employment, Buyer or its applicable Affiliate shall offer employment to such individual on the earliest practicable date following the return of such individual to active employment with Seller and its Affiliates and otherwise on terms and conditions consistent with this Section 5.10; provided that such employee returns to active employment within 180 days following the Closing Date or such later time as required by applicable Law. Seller shall promptly notify Buyer of the occurrence and end of any such leave of absence.

(g) Seller Long-Term Incentive Awards. Outstanding Seller long-term incentive awards held by any Transferred Business Employee as of the applicable Transfer Time shall be treated as set forth on Schedule 5.10(g).

(h) No Third-Party Beneficiaries. The Parties acknowledge and agree that all provisions contained in thisSection 5.10 are included for the sole benefit of the Parties. This Agreement is not intended by the Parties to, and nothing in this Section 5.10 or otherwise in this Agreement, whether express or implied, shall, (i) constitute an amendment to any Business Employee Benefit Plan or any other employee benefit plan, program, policy, agreement or arrangement, (ii) create any obligation of the Parties to any person (other than the other Parties) with respect to any employee compensation or benefit plan, program, policy, agreement or arrangement of the Parent or Seller or any of their respective Affiliates or (iii) confer on any Business Employee or any other person (other than the Parties) any rights or remedies (including third-party beneficiary rights).

Section 5.11. Regulatory Matters.

(a) Transfer of Seller Regulatory Authorizations. Seller will, and will cause its Affiliates to, assist with the transfer of the Seller Regulatory Authorizations to Buyer and, as may be reasonably requested by Buyer, in Buyer's preparation of all notifications or filings required to be filed with the applicable Governmental Authority in order to transfer the Seller Regulatory Authorizations to Buyer. Without limiting the foregoing and to the extent applicable with respect to any particular Seller Regulatory Authorizations, (i) Seller shall, and shall cause its Affiliates to, submit or file all documents required to be submitted by Seller or such Affiliates, as the current owner of a Regulatory Authorizations, pursuant to 21 C.F.R. part 314.72; (ii) Buyer shall submit or file all documents required to be submitted by Buyer, as the new owner of a Regulatory Application, pursuant to 21 C.F.R. part 314.72; (iii) Seller shall, and shall cause its Affiliates to, take all other actions imposed upon a current owner of a Regulatory Application, by applicable Law or Governmental Authority, to transfer the Seller Regulatory Authorizations to Buyer; and (iv) Buyer shall take all other actions imposed upon a new owner of a Regulatory Application, as may be required, by applicable Law or the applicable Governmental Authority, to accept the transfer of the Seller Regulatory Authorizations and responsibility therefor from Seller. Seller and Buyer each agree to submit, and to cause each of their respective Affiliates to submit, all notifications or filings it is required to submit pursuant to the foregoing requirements of this Section 5.11(a) within the **[*****]** days period immediately following the Closing Date.

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

(b) Buyer Responsibilities. From and after the Closing Date, Buyer (on behalf of Seller or its Affiliate to the extent required under applicable Law), at its cost, shall be solely responsible (subject to Seller's obligations set forth in clause (c) below) and liable for (i) taking all actions, paying all fees and conducting all communication with the appropriate Governmental Authority required by Law in respect of the Seller Regulatory Authorizations, including preparing and filing all reports (including adverse drug experience reports) with the appropriate Governmental Authority; (ii) investigating all complaints and reports of adverse drug experiences with respect to the Compound pursuant to such Seller Regulatory Authorizations (whether Exploited before or after transfer of such Seller Regulatory Authorizations); and (iii) fulfilling all other applicable legal and regulatory obligations of a holder of each Seller Regulatory Authorization.

(c) Complaints. After the Closing Date, Seller shall notify Buyer promptly (and in any event within the time period required by Law) if Seller or any of its Affiliates receives a complaint or a report of an adverse drug experience with respect to the Compound. In addition, during the 18-month period immediately following the Closing Date, Seller shall, and shall cause its Affiliates to, use commercially reasonable efforts to assist Buyer (and Buyer shall reimburse Seller its reasonable expenses incurred in connection therewith) in connection with the investigation of and response to any complaint or adverse drug experience report related to the Compound. All notifications pursuant to this Section 5.11(c) shall be by electronic mail at such addresses agreed upon by the Parties' respective safety divisions.

(d) Cooperation. Seller shall, and shall cause its Affiliates to, use commercially reasonable efforts to cooperate with Buyer in supplying reasonable information or assistance in Buyer's fulfillment of its obligations under this Section 5.11.

Section 5.12. Trade Secrets; Patents; Trademarks.

(a) Seller shall, and shall cause its Affiliates and its and their Representatives to, provide or cause to be provided to Buyer (subject to Seller's retained rights pursuant to the terms of the IP License Agreement) all Trade Secrets included within the Seller Intellectual Property promptly following the Closing (and in any event within 10 Business Days of the Closing Date) and Seller shall, and shall cause its Affiliates and its and their Representatives to, maintain the Trade Secret status of all such Trade Secrets from and after the date of this Agreement in accordance with Section 5.5.

(b) Seller agrees that at no time through expiration of the Patents included within the Seller Intellectual Property shall it of any of its Affiliates challenge or oppose, or commence any Action challenging or opposing, directly or indirectly or assist any other Person in challenging or opposing directly or indirectly the validity and/or enforceability of any rights of Buyer or any of its Affiliates in such Patents at any time.

(c) Seller agrees that Buyer and its Affiliates shall be entitled to use Seller's TRUE HUMAN trademark in regulatory filings, patent applications and other documents when describing or referencing the development process for the Compound.

(d) Seller acknowledges and agrees that the Patents listed on Schedule 5.12(d), and any Patents claiming priority to the Patents listed on Schedule 5.12(d), do not and will not include any claims reciting the Compound or relating directly to the Compound or any anti-Interleukin 1 alpha antibody, and lack the disclosure required to support any such claims.

Section 5.13. Expenses. Except as expressly set forth herein, each of Seller and Buyer shall bear its own costs and expenses incurred in connection with this Agreement and the Contemplated Transactions.

Section 5.14. Further Assurances.

(a) Seller shall, and shall cause its Affiliates to, at any time and from time to time after the Closing Date, upon the request of Buyer, do, execute, acknowledge, deliver and file, or cause to be done, executed, acknowledged, delivered or filed, all such further acts, deeds, transfers, conveyances, assignments or assurances as may be reasonably required for the better transferring, conveying, assigning and assuring to Buyer, or for the aiding and assisting in the reducing to possession by Buyer of, any of the Purchased Assets, or for otherwise carrying out the purposes of this Agreement and the Related Documents and the consummation of the Contemplated Transactions.

(b) Subject to, and without altering the rights and obligations set forth in, Section 2.6, for a period of 18 months from and after the Closing Date, if either Buyer or Seller becomes aware that any of the Purchased Assets have not been transferred to Buyer or that any of the Excluded Assets have been transferred to Buyer, it shall promptly notify the other and the Parties hereto shall, as promptly as reasonably practicable, use commercially reasonable efforts, at Seller's sole cost and expense, to ensure such assets are transferred to the correct owner, with any necessary Third Party consents.

Section 5.15. Access. From and after the Closing Date for a period of three years, Seller shall provide Buyer with reasonable access, upon reasonable written notice and during normal business hours, to the management and other personnel of Seller for the purpose of (i) discussing all reasonable inquiries regarding the Purchased Assets or the Compound Program and (ii) providing such other assistance as Buyer may reasonably request related to the Purchased Assets or the Compound Program or the sale, conveyance, delivery, transfer and assignment thereof.

ARTICLE VI

CONDITIONS PRECEDENT

Section 6.1. Conditions to Each Party's Obligations. The respective obligations of each party to effect the Closing are subject to the satisfaction or waiver on or prior to the Closing Date of the following conditions:

(a) Governmental Approvals. Any authorizations, consents, Orders or approvals of, or declarations or filings with, or expirations of waiting periods imposed by, any Governmental Authority under any applicable Law that are required to effect the Closing shall have been made, obtained or terminated or shall have expired.

(b) No Injunctions or Restraints. No temporary restraining order, preliminary or permanent injunction or other Order issued by any court of competent jurisdiction or other Law (collectively, "Legal Restraints") which has the effect of restraining, enjoining or otherwise preventing the consummation of the Contemplated Transactions shall be in effect.

Section 6.2. Conditions to Obligations of Buyer. The obligation of Buyer to effect the Closing is subject to the satisfaction or waiver by Buyer on or prior to the Closing Date of the following additional conditions:

(a) Representations and Warranties. The representations of warranties of Seller contained in this Agreement that are qualified as to materiality or Material Adverse Effect shall be true and correct, and the representations and warranties of Seller contained in this Agreement that are not so qualified shall be true and correct in all material respects, in each case as of the date of this Agreement and as of the Closing Date as though made at such time, except to the extent such representations and warranties expressly relate to an earlier date, in which case as of such earlier date. Buyer shall have received a certificate signed on behalf of Seller by an authorized executive officer of Seller to such effect.

(b) Performance of Obligations of Seller. Seller shall have performed and complied in all material respects with all of its covenants, agreements and obligations contained in this Agreement and required to be performed or complied with on or prior to the Closing Date. Buyer shall have received a certificate signed on behalf of Seller by an authorized executive officer of Seller to such effect.

(c) No Material Adverse Effect. Since the date of this Agreement, there shall not have occurred a Material Adverse Effect. Buyer shall have received a certificate signed on behalf of Seller by an authorized executive officer of Seller to such effect.

(d) No Actions. There shall not be pending or threatened any Action brought by any Governmental Authority or any other Person having a reasonable likelihood of prevailing challenging or seeking to restrain or prohibit the consummation of the Contemplated Transactions.

Section 6.3. Conditions to Obligations of Seller. The obligation of Seller to effect the Closing is subject to the satisfaction or waiver by Seller on or prior to the Closing Date of the following additional conditions:

(a) Representations and Warranties. The representations of warranties of Buyer contained in this Agreement that are qualified as to materiality or Material Adverse Effect shall be true and correct, and the representations and warranties of Buyer contained in this Agreement that are not so qualified shall be true and correct in all material respects, in each case as of the date of this Agreement and as of the Closing Date as though made at such time, except to the extent such representations and warranties expressly relate to an earlier date, in which case as of such earlier date. Seller shall have received a certificate signed on behalf of Buyer by an authorized executive officer of Buyer to such effect.

(b) Performance of Obligations of Seller. Buyer shall have performed and complied in all material respects with all of its covenants, agreements and obligations contained in this Agreement and required to be performed or complied with on or prior to the Closing Date. Seller shall have received a certificate signed on behalf of Buyer by an authorized executive officer of Buyer to such effect.

Section 6.4. Frustration of Closing Conditions. Neither Seller nor Buyer may rely on the failure of any condition set forth in Section 6.1, 6.2 or 6.3, as the case may be, to be satisfied if such failure was caused by such party's failure to comply with the terms of this Agreement.

ARTICLE VII

INDEMNIFICATION

Section 7.1. Indemnification of Buyer. (a) From and after the Closing, Seller shall indemnify Buyer and its Affiliates and each of their respective officers, directors, employees, equity holders, agents and other Representatives (each, a "Buyer Indemnified Party") against and hold each Buyer Indemnified Party harmless from any and all debts, losses, Liabilities, damages, Liens, Taxes, penalties, costs of investigation, other costs and expenses (whether known or unknown, absolute or contingent, liquidated or unliquidated, direct or indirect, due or to become due, accrued or not accrued, asserted or unasserted or otherwise) (collectively, "Losses") suffered or incurred by such Buyer Indemnified Party, arising from, relating to or otherwise in connection with:

(i) any breach of any representation or warranty of Seller contained in this Agreement or any Related Document, without giving effect to any materiality threshold or qualifier contained therein (including in the definition of Material Adverse Effect);

(ii) any breach of or failure to perform any covenant or agreement of Seller contained in this Agreement or any Related Document; or

(iii) any Excluded Liability or Excluded Asset.

(b) The consent of Seller shall not be required in order for Buyer to be indemnified under this Article VII.

(c) In the case of a Buyer Indemnified Party's rights to indemnification pursuant to this Section 7.1, for as long as there are funds available in the Escrow Fund to cover the Buyer Indemnified Parties' indemnifiable Losses, any and all Losses payable by Seller to the Buyer Indemnified Parties with respect to such indemnifiable Losses will be paid in cash first out of the Escrow Fund, and in the event such Losses exceed, or are not paid and satisfied in full from, the Escrow Fund, will be paid directly by Seller to the applicable Buyer Indemnified Parties.

Section 7.2. Indemnification of Seller Indemnified Parties. (a) From and after the Closing, Buyer shall indemnify Seller and its Affiliates and each of their respective officers, directors, employees, equity holders, agents and Representatives (each a "Seller Indemnified Party") against and hold each Seller Indemnified Party harmless from any and all Losses suffered or incurred by any such Seller Indemnified Party arising from, relating to or otherwise in connection with:

(i) any breach of any representation or warranty of Buyer contained in this Agreement or any Related Document, without giving effect to any materiality threshold or qualifier contained therein;

(ii) any breach of or failure to perform any covenant or agreement of Buyer contained in this Agreement or any Related Document;

(iii) any Assumed Liability; or

(iv) any Liabilities arising out of Buyer's or its Affiliates' operation of the Purchased Assets after the Closing, excluding, for the avoidance of doubt, any Excluded Liabilities.

Section 7.3. Limitations.

(a) Notwithstanding anything to the contrary contained herein, no Buyer Indemnified Party or Seller Indemnified Party, as applicable, shall be entitled to be indemnified pursuant to Section 7.1(a)(i) and Section 7.2(a)(i):

(i) unless and until the aggregate of all Losses for which the Buyer Indemnified Parties or the Seller Indemnified Parties, as applicable, would, but for this paragraph (i), be entitled to indemnification hereunder exceeds on a cumulative basis $5,000,000 (the "Indemnity Threshold"), at which point each Buyer Indemnified Party or Seller Indemnified Party, as applicable, shall be entitled to be indemnified for the aggregate of all Losses in excess of the Indemnity Threshold; and

(ii) unless the amount of an individual claim for Losses under Section 7.1(a)(i) or Section 7.2(a)(i) (aggregating all claims and Losses arising from substantially the same or similar facts as applicable to each of Section 7.1(a)(i) or Section 7.2(a)(i)), as applicable, exceeds $25,000, and no such claim shall be applied toward the Indemnity Threshold;

provided, however, that the foregoing provisions of this Section 7.3(a) shall not apply with respect to any act of fraud or (i) any breach of or inaccuracy in the representations and warranties set forth in Sections 3.1, 3.2(a), 3.4(a), 3.5(a), 3.5(j), 3.9, or 3.14 (the "Specified Representations") or (ii) any breach of the representations and warranties set forth in Sections 4.1, 4.2(a) or 4.5.

(b) Other than in the case of any act of fraud (where the rights of Buyer Indemnified Parties or Seller Indemnified Parties, as applicable, shall not be limited by anything set forth in this Agreement to the contrary), in no event shall the aggregate amount for which Buyer Indemnified Parties or Seller Indemnified Parties, as applicable, shall be indemnified and held harmless under Section 7.1(a)(i) and Section 7.2(a)(i): (i) with respect to breaches of any of the representations and warranties of (A) Seller other than the Specified Representations or (B) Buyer other than those set forth in Sections 4.1, 4.2(a) or 4.5, in each case, exceed the Escrow Amount, and (ii) with respect to breaches of any of (A) the Specified Representations or (B) the representations set forth in Sections 4.1, 4.2(a) or 4.5, in each case, exceed the Purchase Price (the "Cap").

Section 7.4. Indemnification Claims. (a) In order for a Buyer Indemnified Party or a Seller Indemnified Party (an "Indemnified Party") to be entitled to any indemnification provided for under Section 7.1 or 7.2 in respect of, arising out of or involving an Action initiated or commenced by or on behalf of a Third Party (a "Third Party Claim"), such Indemnified Party must notify, with respect to a claim for indemnification pursuant to Section 7.1, Seller, or, with respect to a claim for indemnification pursuant to Section 7.2, Buyer (each, an "Indemnifying Party") in writing of the Third Party Claim (including in such notice a brief description of the applicable claim(s), including damages sought or estimated, to the extent actually known by such Indemnified Party) within 20 Business Days after receipt by such Indemnified Party of actual notice of the Third Party Claim; provided, however, that failure to give such notification shall not affect the indemnification provided under Section 7.1 or 7.2 except to the extent the Indemnifying Party has been actually prejudiced as a result of such failure (it being understood that the failure to have released the applicable portion of the Escrow Amount at the expected release time due to an inability to ascertain the amount of Loss owed to a Buyer Indemnified Party at such time shall not constitute such prejudice). The Indemnifying Party shall have the right to undertake the defense or opposition to such Third Party Claim (at the Indemnifying Party's expense) with counsel selected by it and reasonably satisfactory to the Indemnified Party so long as (i) the Indemnifying Party gives written notice to the Indemnified Party within 20 Business Days after it has been notified of the Third Party Claim that it will defend the Indemnified Party against such Third Party Claim and the Indemnifying Party acknowledges its obligation to indemnify the Indemnified Party for Losses related to such Third Party Claim (subject to the Indemnity Threshold and the Cap, to the extent applicable, and the other limitations set forth herein), (ii) the Third Party Claim involves only money damages, does not seek an injunction or other equitable relief against the Indemnified Party and does not relate to or arise in connection with any criminal proceeding, action, indictment, allegation or investigation, (iii) the amount claimed in such Third Party Claim, taken together with the reasonably estimated costs of defense thereof and the claimed amount with respect to any unresolved claims for indemnification under this Article VII then pending, is (A) greater than the Indemnity Threshold and (B) if applicable, less than the Cap (as reduced by any amounts previously paid by the Indemnifying Party with respect to any resolved claims for indemnification under this Article VII), (iv) the Indemnified Party has not been advised in writing by outside counsel that a legal conflict exists between the Indemnified Party and the Indemnifying Party in connection with conducting the defense of the Third Party Claim, (v) the Third Party Claim does not allege the infringement of the Intellectual Property Rights of any Person by the Indemnified Party and (vi) the Indemnifying Party commits in writing to the Indemnified Party to diligently and vigorously and in good faith conduct the defense of the Third Party Claim. Neither the Indemnified Party nor the Indemnifying Party shall settle any Third Party Claim without the prior written consent of the other Party unless (1) the claimant in such Third Party Claim provides to such other Party an unqualified release of such other Party from all liability in respect of such Third Party Claim, (2) such settlement does not involve any injunctive relief binding upon such other Party, (3) such settlement does not encumber any of the assets of such other Party or impose any restriction or condition that would apply to or affect such other Party or the conduct of such other Party's businesses and (4) such settlement does not involve any admission of liability or wrongdoing by such other Party.

(b) In order for an Indemnified Party to be entitled to any indemnification provided for under this Agreement other than in respect of, arising out of or involving a Third Party Claim, such Indemnified Party shall deliver notice of such claim with reasonable promptness to the Indemnifying Party (including in such notice a brief description of the applicable claim(s), including damages sought or estimated, to the extent actually known by such Indemnified Party); provided, however, that failure to give such notification shall not affect the indemnification provided under Section 7.1 or 7.2 except to the extent the Indemnifying Party has been actually prejudiced as a result of such failure (it being understood that the failure to have released the applicable portion of the Escrow Amount at the expected release time due to an inability to ascertain the amount of Loss owed to a Buyer Indemnified Party at such time shall not constitute such prejudice). If the Indemnifying Party does not notify the Indemnified Party within 20 Business Days following its receipt of such notice that the Indemnifying Party disputes the indemnity claimed by the Indemnified Party under Section 7.1 or 7.2 such indemnity claim specified by the Indemnified Party in such notice shall be conclusively deemed a liability to be indemnified under Section 7.1 or 7.2 and the Indemnified Party shall be indemnified for the amount of the Losses stated in such notice to the Indemnified Party on demand or, in the case of any notice in which the Losses (or any portion thereof) are estimated, on such later date when the amount of such Losses (or such portion thereof) becomes finally determined, but in all cases subject to the Indemnity Threshold and the Cap, to the extent applicable.

Section 7.5. Termination of Indemnification. (a) The obligations to indemnify and hold harmless an Indemnified Party hereto (i) pursuant to Sections 7.1(a)(i) and 7.2(a)(i), shall terminate when the applicable representation or warranty terminates pursuant to Section 7.5(b) and (ii) pursuant to the other clauses of Sections 7.1(a) and 7.2(a) shall terminate sixty (60) days after the expiration of any statute of limitations applicable thereto; provided, however, that as to clause (i) above such obligation to indemnify and hold harmless shall not terminate with respect to any Losses as to which the Indemnified Party shall have, before the expiration of the applicable period, previously made a claim by delivering a notice of such claim to the Indemnifying Party.

(b) All representations, warranties, covenants and obligations contained in this Agreement shall survive the consummation of the transactions contemplated by this Agreement; provided, however, that, except in the case of fraud, (i) the Specified Representations and the representations and warranties set forth in Sections 4.1, 4.2(a) and 4.5 shall terminate sixty (60) days after the expiration of any statute of limitations applicable thereto and (ii) the representations and warranties contained in this Agreement other than the Specified Representations shall terminate on the date that is 18 months after the Closing Date; provided, further, such covenants and agreements of the Parties shall survive until they are fully performed or, if earlier, until the expiration thereof set forth in the terms of such covenants and agreements.

Section 7.6. Exclusive Remedies. Buyer and Seller acknowledge and agree that after the Closing, the indemnification provisions of this Article VII shall be the sole and exclusive remedies of Buyer and Seller for any breach of the representations or warranties or nonperformance of or default under any covenants or agreements of Buyer or Seller contained in this Agreement or any Related Document (other than (i) claims for equitable relief, (ii) claims of, or causes of action arising from, fraud or (iii) as expressly provided in any Related Document).

ARTICLE VIII

TERMINATION

Section 8.1. Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the written consent of Buyer and Seller;

(b) by either Buyer or Seller, if:

(i) the Closing shall not have occurred on or before April 7, 2020 (the "Outside Date"); provided, however, that the right to terminate this Agreement under this Section 8.1(b)(i) shall not be available to any Party whose failure to perform and comply with any covenant, agreement or obligation contained in this Agreement has been the primary cause of, or primarily resulted in, the failure of the Closing to occur on or before such date;

(ii) if any Legal Restraint having the effect of restraining, enjoining or otherwise preventing the consummation of the Contemplated Transaction shall be in effect and shall have become final and non-appealable; or

(iii) the other Party shall have breached or failed to perform any of its representations, warranties, covenants, agreements or obligations contained in this Agreement, and such breach or failure to perform (A) would give rise to the failure of a condition set forth in Section 6.2(a) or 6.2(b) or in Section 6.3(a) or Section 6.3(b), as applicable, and (B) cannot be cured by the Outside Date or, if capable of being cured by the Outside Date, has not been cured prior to the date that is 15 days from the date that such other Party receives written notice of such breach or failure to perform.

Section 8.2. Notice of Termination. In the event of termination of this Agreement by either or both of Buyer and Seller pursuant to Section 8.1, written notice of such termination shall be given by the terminating Party to the other Party.

Section 8.3. Effect of Termination. Notwithstanding anything to the contrary in this Agreement, in the event of termination of this Agreement by either or both of Buyer and Seller pursuant to Section 8.1, this Agreement shall terminate and become void and have no effect, and there shall be no liability or obligation on the part of any Party, other than the provisions of Section 5.5, Section 5.13, this Section 8.3 and Article IX, which shall survive any such termination, and except to the extent that such termination results from a material breach by a Party of any of its representations, warranties, covenants, agreements, obligations or undertakings set forth in this Agreement.

ARTICLE IX

GENERAL PROVISIONS

Section 9.1. Rules of Construction. The Parties agree that they have been represented by counsel during the negotiation and execution of this Agreement and have together drafted this Agreement and, therefore, waive the application of any Law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the Party drafting such agreement or document.

Section 9.2. Notices. All notices, requests, claims, demands and other communications hereunder shall be given (and shall be deemed to have been duly given upon receipt) by hand delivery, by prepaid overnight courier (providing written proof of delivery), by confirmed electronic transmission or by certified or registered mail (return receipt requested and first class postage prepaid), addressed as follows (or at such other address for a Party as shall be specified by like notice):if to Buyer, to:

Janssen Biotech, Inc.
800 Ridgeview Drive
Horsham, PA 19044
Attention: President

with copies (which shall not constitute notice) to:

Johnson & Johnson
Law Department
One Johnson & Johnson Plaza
New Brunswick, NJ 08933

Attention: General Counsel, Pharmaceuticals

Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019

Attention: Robert I. Townsend, III, Esq.
Jenny Hochenberg, Esq.

if to Seller, to:

XBiotech Inc.
5217 Winnebago Lane
Austin, Texas 78744

Attention: John Simard

with a copy (which shall not constitute notice) to:

Bryan Cave Leighton Paisner LLP
120 Broadway, Suite 300
Santa Monica, California 90401

Attention: David G. Andersen

provided that any notice received at the addressee's location on any Business Day after 5:00 p.m. (addressee's local time) shall be deemed to have been received at 9:00 a.m. (addressee's local time) on the next Business Day.

Section 9.3. Consents and Approvals. For any matter under this Agreement requiring the consent or approval of either Party to be valid and binding on the Party, such consent or approval must be in writing.

Section 9.4. Counterparts. This Agreement may be executed in one or more counterparts (including by electronic transmission), all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

Section 9.5. Entire Agreement; No Third-Party Beneficiaries. This Agreement, the Escrow Agreement, the Confidentiality Agreement and the other Related Documents constitute the entire agreement, and supersede all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter of this Agreement, the Escrow Agreement, the Confidentiality Agreement and the other Related Documents. Except as provided in Article VII, this Agreement is for the sole benefit of the Parties and is not intended to and does not confer upon any Person other than the Parties any legal or equitable rights or remedies.

Section 9.6. Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of law or otherwise by either of the Parties without the prior written consent of the other Party, and any assignment without such consent shall be null and void, except that Buyer may assign any or all of its rights and obligations under this Agreement to any of its Affiliates without the consent of Seller.

Section 9.7. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

Section 9.8. Enforcement.

(a) Each Party irrevocably submits to the exclusive jurisdiction of (i) the state courts of New York located in New York County, and (ii) the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of this Agreement or the Contemplated Transactions. Each Party agrees to commence any such action, suit or proceeding either in the United States District Court for the Southern District of New York or if such suit, action or other proceeding may not be brought in such court for jurisdictional reasons, in the state courts of New York located in New York County. Each Party further agrees that service of any process, summons, notice or document by the U.S. registered mail to such Party's respective address set forth above shall be effective service of process for any action, suit or proceeding in New York with respect to any matters to which it has submitted to jurisdiction in this Section 9.8. Each Party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the Contemplated Transactions in (x) the state courts of New York located in New York County, and (y) the United States District Court for the Southern District of New York, and hereby and thereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

(b) EACH PARTY WAIVES ITS RIGHT TO TRIAL OF ANY ISSUE BY JURY . Each Party (i) certifies that no representative, agent or attorney of the other Party has represented, expressly or otherwise, that such Party would not, in the event of any action, suit or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other Party has been induced to enter into this Agreement, by, among other things, the mutual waiver and certifications in this Section 9.8(b).

(c) The Parties agree that irreparable damage would occur and that the Parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in the state courts of New York located in New York County, and the United States District Court for the Southern District of New York, this being in addition to any other remedy to which they are entitled at law or in equity and as further set forth in this Section 9.8. For the avoidance of doubt, this Section 9.8(c) shall not restrict any Party from asserting that the terms and provisions of this Agreement have not been breached (or would not be breached) by the actions or omissions (or intended actions or omissions) of such Party.

Section 9.9. Severability. If any term or other provision of this Agreement or any Related Document is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement or such Related Document shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement or such Related Document so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable Law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 9.10. Amendment; Waiver. No modification, amendment or waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the Party against whom enforcement of any such modification, amendment or waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of either Party, shall be deemed to constitute a waiver by the Party taking such action of compliance by the other Party with any representation, warranty, covenant, agreement or obligation contained herein. The waiver by either Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. Neither the failure of either Party to enforce, nor the delay of either Party in enforcing, any condition or part of this Agreement at any time shall be construed as a waiver of that condition or part or forfeit any rights to future enforcement thereof.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective officers hereunto duly authorized, all as of the date first written above.

SELLER:

XBIOTECH INC.

By: /s/ John Simard
Name: John Simard
Title: President & CEO

BUYER:

JANSSEN BIOTECH, INC.

By: /s/ Marti Heckman
Name: Marti Heckman
Title: Vice President

Exhibit 2.4(b)(vii)

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

Dated December 30, 2019

JANSSEN BIOTECH, INC.

- and -

XBIOTECH INC.

IP NON-ASSERTION AND LICENSE AGREEMENT

CONTENTS

THIS AGREEMENT is made the 30th day of December, 2019

BETWEEN:

(1) **JANSSEN BIOTECH, INC.**, a Pennsylvania corporation ("**Janssen**") with its principal office at 800/850 Ridgeview Drive, Horsham, Pennsylvania, 19044, United States; and

(2) **XBIOTECH INC.**, a corporation existing under the laws of the Province of British Columbia ("**XBiotech**") with its principal office at 5217 Winnebago Lane, Austin, TX 78744, United States,

each a "**Party**" and together the "**Parties**".

WHEREAS:

(A) As of before the Commencement Date (as defined below), XBiotech owns all right, title, and interest in and to Core Bermekimab Patents, Other Bermekimab Patents, and General IL-1α Patents.

(B) Pursuant to the Asset Purchase Agreement (the "**Purchase Agreement**") between Janssen and XBiotech, dated as of December 7, 2019, Janssen agreed to purchase all of XBiotech's and its Affiliates' right, title and interest in, to and under the Core Bermekimab Patents and Other Bermekimab Patents (the "**Acquisition**").

(C) As a result of the Acquisition, and subject to the rights granted in this Agreement, at the Commencement Date, Janssen will own all right, title and interest in, to and under the Core Bermekimab Patents and Other Bermekimab Patents, and XBiotech will remain the owner of all right, title and interest in, to and under the General IL-1α Patents.

(D) The Parties wish to allay applicable development and Infringement concerns through the intellectual property non-assertion obligations and license rights provided in this Agreement.

NOW IT IS HEREBY AGREED as follows:

1. INTERPRETATION

1.1 Any capitalized term used in this Agreement but not otherwise defined herein shall have the meaning ascribed thereto in the Purchase Agreement. In this Agreement the following words and expressions shall have the following meanings:

"Affiliate"	of any Person means another Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with, such first Person;
"Applicable Law"	means any applicable law, statute, rule, regulation ordinance, code, or any judgment, order (whether executive, legislative, judicial or otherwise), writ, injunction, decree, decision or other requirement of any Governmental Entity;

"Business Day"	means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions located in New York City are permitted or required by applicable Law to remain closed;
"Commencement Date"	means the Closing Date as defined in the Purchase Agreement;
"Commercially Reasonable Efforts"	means, with respect to each Party's obligations under this Agreement, including such Party's [*****] those reasonable, good faith efforts normally used by such Party to accomplish similar objectives under similar circumstances for similar products or product candidates owned or controlled by such Party, or to which such Party has similar rights, which product or product candidate is of similar market potential in such country and is at a similar stage in its development or product life, taking into account all relevant scientific, technical, operational, commercial, economic and other factors that may affect the development, marketing approval, manufacturing or exploitation of a product or Patent, including (as applicable): actual and potential issues of safety, efficacy and/or stability; expected and actual product profile (including product modality, category and mechanism of action); stage of development or life cycle status; actual and projected Development, Marketing Approval, manufacturing, and Exploitation costs, timelines and budgets; any issues regarding the ability to manufacture or have manufactured the Product; the likelihood of obtaining Marketing Approvals; the timing of such approvals; labelling or anticipated labelling; the then-current competitive environment and the likely competitive environment at the time of projected entry into the market, including the expected and actual competitiveness of alternative products; past performance of the product or similar products; present and future market potential; existing or projected pricing, sales, reimbursement and profitability; and expected and actual proprietary position, strength and duration of patent protection and anticipated regulatory or other exclusivity as such Party would normally use to accomplish a similar objective under similar circumstances;

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

"Compound"	means the monoclonal antibody known as bermekimab (MABp1), the sequence of which is set forth in Schedule 1.1(c) of the Purchase Agreement;

"Confidential Information"	has the meaning given in Sections 8.1 and 8.2;
"Core Bermekimab Patents"	means all Patents as set forth in Schedule A, and to the extent not set forth in Schedule A, shall mean all continuations, continuations-in-part, divisions, renewals, patent term extensions (including any supplemental protection certificates), re-examinations or reissues of such Patents set forth in Schedule A;
"Dataset"	means, with respect to Janssen, the dataset generated in the course of development, testing, and clinical studies directed to the Compound; and with respect to Xbiotech, the dataset generated in the course of development, testing, and clinical studies directed to the New Antibody;
"Disclosing Party"	has the meaning given in Section 8.1;
"Exploit"	means, with respect to products or services covered by Licensed Rights: (i) to research and develop, including by conducting pre-clinical studies, clinical trials and any other steps required for regulatory approval; (ii) to manufacture or to perform any step in the process of manufacturing, including any steps involved in fabrication, testing, packaging and assembly (including the planning, purchasing of materials for, production, processing, storage, packaging, labelling, leafleting, warehousing, quality control testing, waste disposal, quality release and sample retention); (ii) to keep (whether for disposal or otherwise); (iii) to promote, market, distribute, import, export, sell (including lease), dispose and supply; and/or (iv) to offer to do or have done any of the foregoing in (i) to (iii), and "**Exploited**" and "**Exploitation**" shall be construed accordingly;
"General IL-Iα Patents"	means all Patents as set forth in Schedule C, and to the extent not set forth in Schedule C, shall meanall continuations, continuations-in-part, divisions, renewals, patent term extensions (including any supplemental protection certificates), re-examinations or reissues of such Patents set forth in Schedule C;

"Governmental Entity"	means any court, administrative body, local authority or other governmental or quasi-governmental entity with competent jurisdiction, any supra-national, national, federal, state, municipal, provincial or local governmental, regulatory or administrative authority, agency, commission, court, tribunal, arbitral body, self-regulated entity, securities exchange, private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority or other governmental entity, which has or claims to have competent jurisdiction over the relevant Person or its business, property, assets or operations;
"Granted Rights"	means the (i) Licensed Rights and (ii) non-assertion rights granted under Section 2 of this Agreement, collectively;
"Group"	means the XBiotech Group and/or the Janssen Group (as the context requires);
"Infringement"	means any actual, threatened, or suspected infringement (direct or indirect) or unauthorized use;
"Intellectual Property Rights"	has the meaning given in the Purchase Agreement;
"Invalidity Claim"	means any actual or threatened claim by a Person alleging invalidity or unenforceability or challenging entitlement to, or ownership of, any of the Licensed Rights, whether such claim is made in connection with the defense of an infringement or unauthorized use action or otherwise, including, in all cases, any post-grant opposition, re-issue, and re-examination, any contested case (including inter partes review, post-grant review, interference or derivation) or other similar proceedings before national or supranational intellectual property offices, including the U.S. Patent and Trademark Office, the European Patent Office and the World Intellectual Property Organisation;
"Janssen Group"	means Janssen and its Affiliates from time to time;
"Know-how"	means all non-public forms and types of financial, business, scientific, technical, economic or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs or codes, whether tangible or intangible, and whether or how stored, compiled or memorialized physically, electronically, graphically, photographically or in writing if (a) the owner thereof has taken reasonable measures to keep such information secret and (b) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information, including all Intellectual Property Rights meeting the definition of "trade secret" as set forth in the Defend Trade Secrets Act;

"Licensed Rights"	means: (a) in respect of any licenses granted by Janssen, Other Bermekimab Patents; and (b) in respect of any licenses granted by XBiotech, General IL-1α Patents and all Know-How used in or related to the Business to the extent not included in the Purchased Assets;
"Licensee"	means: (a) in respect of any licenses granted to XBiotech (including the licenses in Section 2.2), XBiotech; and (b) in respect of any licenses granted to Janssen (including the licenses in Section 2.3), Janssen;
"Licensor"	means: (a) in respect of any licenses granted by Janssen (including the licenses in Section 2.2), Janssen; and (b) in respect of any licenses granted by XBiotech (including the licenses in Section 2.3), XBiotech;
"Other Bermekimab Patents"	means all Patents as set forth in Schedule B, and to the extent not set forth in Schedule B, shall mean all continuations, continuations-in-part, divisions, renewals, patent term extensions (including any supplemental protection certificates), re-examinations or reissues of such Patents set forth in Schedule B;
"Patents"	has the meaning given in the Purchase Agreement;
"Receiving Party"	shall have the meaning given to it in Section 8.1;
"Representatives"	shall have the meaning given to it in Section 8.2.2;

"Sub-license" shall have the meaning given to it in Section 3;

"Working Hours" means 9.30 a.m. to 5.30 p.m. on a Business Day.

"XBiotech Group" means XBiotech and its Affiliates from time to time;

1.2 In this Agreement, unless otherwise specified:

1.2.1 headings to Sections are for convenience only and do not affect the interpretation of this Agreement;

1.2.2 a reference to any statute, regulation or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, consolidated, amended, modified, extended or re-enacted except to the extent that any such amendment, modification, extension or re-enactment after the date of this Agreement would increase or extend the liability of any Person under or pursuant to this Agreement;

1.2.3 references to a "**Person**" shall be construed so as to include any individual, firm, company, corporation, body corporate, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);

1.2.4 a "**subsidiary**" means a Subsidiary as defined in the Purchase Agreement;

1.2.5 any question as to whether a Person "**Controls**" another (including for the purposes of the definition of "**Affiliate**") shall be determined in accordance with the Purchase Agreement (and "**Controlled**" shall be construed accordingly);

1.2.6 references to times of day are to New York time; and

1.2.7 the use of the words "**includes**" or "**including**" shall be deemed to say also "**without limitation**".

2. NON-ASSERTION AND GRANT OF LICENSES

2.1 The Agreement shall take effect on the Commencement Date.

2.2 Janssen hereby:

(a) agrees that neither it, its Affiliates, nor any entity which receives rights from Janssen as permitted in Section 12 [*****] against XBiotech, its exclusive licensees or any entity which receives all or substantially all of XBiotech's or XBiotech's Affiliates' rights, as permitted in Section 12, in [*****] any [*****] for the [*****], to the extent such [*****] is permitted under the Purchase Agreement provided that XBiotech shall not transfer its rights under this Section 2.2(a) in a manner that allows XBiotech to retain substantially the same rights that it transfers to such transferee subsequent to such transfer;

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

(b) grants to XBiotech during the Term a non-exclusive, worldwide, royalty-free and fully paid-up, transferable (as provided in Section 12), sub-licensable (as provided in Section 3) license to Exploit any New Antibody, to the extent permitted under the Purchase Agreement, under the Licensed Rights (excluding, for the avoidance of doubt, the Core Bermekimab Patents); and

(c) agrees that if Janssen, its Affiliates, or any entity which receives rights from Janssen as permitted in Section 12 [*****] in the [*****] years following the Commencement Date that [*****] from XBiotech pursuant to the Purchase Agreement (including from a Third Party through any of the Assumed Contracts) and that is existing as of the Commencement Date, and the [*****] commenced by XBiotech on [*****] and the [*****] commenced by XBiotech on [*****] and including, with respect to the [*****] after the Commencement Date then none of Janssen, its Affiliates, or any entity which receives rights from Janssen as permitted in Section 12 [*****] against XBiotech, its exclusive licensees or any entity which receives all or substantially all of XBiotech's or XBiotech's Affiliates' rights, as permitted in Section 12 for [*****] to the extent such [*****] is permitted under the Purchase Agreement provided that XBiotech shall not transfer its rights under this Section 2.2(a) in a manner that allows XBiotech to retain substantially the same rights that it transfers to such transferee subsequent to such transfer.

2.3 XBiotech hereby grants to Janssen during the Term a non-exclusive, worldwide, royalty-free and fully paid-up, transferable (as provided in Section 12), sub-licensable (as provided in Section 3) license to Exploit the Licensed Rights, provided, with respect to Know-How, that Janssen shall not transfer such rights in a manner that allows Janssen to retain substantially the same rights that it transfers to such transferee subsequent to such transfer.

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

2.4 To the extent that in connection with any XBiotech agreement that is in force as of the Commencement Date (including where such agreement is subsequently amended, restated, substituted, or otherwise modified) with a Third Party, XBiotech at any time Controls a Patent, other than a Core Bermekimab Patent or an Other Bermekimab Patent, having any claim which recites the Compound or the CDRs of the Compound and not a non-Compound anti-IL-1α antibody as a limitation (such Patent, a "**Contingent Bermekimab Patent**"), XBiotech, to the extent it has the right to do so, hereby grants to Janssen an exclusive (with respect to claims which recite the Compound or the CDRs of the Compound and not a non-Compound anti-IL-1α antibody as a limitation) or non-exclusive (with respect to other claims of such Contingent Bermekimab Patent), worldwide, royalty-free and fully paid-up, transferable (as provided in Section 12), sub-licensable (as provided in Section 3) license to Exploit such Contingent Bermekimab Patent. If XBiotech does not have the right to grant Janssen a license in accordance with this Section 2.4, XBiotech agrees to use Commercially Reasonable Efforts to obtain any necessary consent or rights from such Third Party to license such Contingent Bermekimab Patent to Janssen, subject to Janssen paying any applicable license fees or other consideration required to procure such rights.

2.5 To the extent that any claim in a Patent within the General IL-1α Patents is granted after the Commencement Date, including any such claims arising out of patent term extensions (including any supplemental protection certificates), re-examinations or reissues of General IL-1α Patents, which would be infringed by the Compound or a method of using the Compound, XBiotech hereby grants to Janssen an exclusive (with respect to claims which recite the Compound or the CDRs of the Compound and not a non-Compound anti-IL-1α antibody as a limitation) or non-exclusive (with respect to other claims of such Patent within the General IL-1α Patents), worldwide, royalty-free and fully paid-up, transferable (as provided in Section 12), sub-licensable (as provided in Section 3) license to Exploit the Patent containing such claim. To the extent that any claim in a Patent within the Other Bermekimab Patents or Core Bermekimab Patents is granted after the Commencement Date, including any such claims arising out of patent term extensions (including any supplemental protection certificates), re-examinations or reissues of Other Bermekimab Patents, is reasonably necessary to Exploit any New Antibody, Janssen hereby grants to XBiotech a non-exclusive, worldwide, royalty-free and fully paid-up, transferable (as provided in Sections 12), sub-licensable (as provided in Section 3) license to Exploit the Patent containing such claim.

2.6 To the extent that from the Commencement Date until [*****] years after the Commencement Date, either Party [*****] and that, [*****] would be [*****] with respect to a [*****] or (ii) [*****] with respect to a [*****] then such Party [*****] with the other Party [*****] pursuant to which the [*****] that it and its Affiliates, and any entity which receives rights from such [*****] or its Affiliates, as permitted in Section 12, [*****] as applicable, subject to terms of the Purchase Agreement.

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

2.7 Only those licenses expressly granted in this Agreement or the Purchase Agreement have effect. No license or other Intellectual Property Rights are granted by implication, estoppel or any other method that is not express.

2.8 In accordance with Section 5.6 of the Purchase Agreement, XBiotech hereby grants Janssen a paid-up, royalty-free, exclusive, worldwide license under its rights in Dermatology to any Patents that claim a New Antibody as a composition of matter or a method of using a New Antibody solely for purposes of ensuring that any Third-Party product containing such New Antibody will not be manufactured or commercialized for use in a Dermatology indication. Said license shall expire [*****] years from the Commencement Date.

3. SUB-LICENSING

3.1 Each Party in its role as Licensee or as a recipient of non-assertion rights under Section 2 shall be entitled to sub-license or sub-contract its non-assertion and license rights under this Agreement to any member of such Party's Group or Third Parties engaged by such Party solely to provide research, development, and/or manufacturing services in furtherance of, as applicable, such Party's Exploitation of the Granted Rights, without the prior written consent of Licensor provided that:

3.1.1 the provisions of the agreement under which a Party in its role as Licensee or as a recipient of non-assertion rights under Section 2 sub-licenses or sub-contracts its rights under this Agreement (the **"Sub-license"**) are in writing and obligate the sub-licensee or sub-contractor to comply with all terms and conditions of this Agreement (except those provisions which, by their clear meaning, are not applicable to a sub-licensee or sub-contractor, as applicable);

3.1.2 the Sub-license prohibits further sub-licensing and sub-contracting by the sub-licensee or sub-contractor without the prior written consent of the other Party in its role as Licensor or as the grantor of non-assertion rights in Section 2;

3.1.3 the Sub-license imposes obligations of confidentiality on the sub-licensee or sub-contractor which are no less onerous than those set out in Section 8;

3.1.4 the Sub-license shall terminate if this Agreement expires or is terminated; and

3.1.5 any act of the sub-licensee or sub-contractor which would if committed by a Party in its role as Licensee or as a recipient of non-assertion rights under Section 2 be a breach of this Agreement shall be treated for the purposes of this Agreement as an equivalent breach by that Party in its role as Licensee or as a recipient of non-assertion rights under Section 2 of the terms of this Agreement.

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

3.2 Except as provided in Section 3.1, a Party in its role as Licensee or as a recipient of non-assertion rights granted in Section 2 of this agreement, shall not sub-license or sub-contract its rights under this Agreement without the prior written consent of the other Party in its role as Licensor or as the grantor of non-assertion rights in Section 2, not to be unreasonably withheld or delayed. For the sake of clarity, XBiotech shall be entitled to exclusively sub-license or exclusively subcontract its license and non-assertion rights under Section 2.2(a) to one or more Third Parties for purposes of permitting such Third Parties to Exploit any New Antibody to the extent such Exploitation is permitted under the Purchase Agreement and provided that XBiotech shall not sub-license or subcontract its rights under Section 2.2(a) in a manner that allows XBiotech to retain substantially the same rights that it sub-licenses or subcontracts to such sub-licensee or subcontractor subsequent to such sub-license or subcontract.

4. REGISTRATION OF LICENSES

Each Party has the right to request the registration of the licenses at the competent national or supranational intellectual property offices at its own cost. Licensor agrees to issue Licensee all necessary powers and to effect all necessary signatures for this purpose. All registered materials shall be reviewed by the non-submitting Party and provided with an opportunity to redact the licenses sought for registration.

5. NO REPRESENTATIONS OR WARRANTIES

5.1 Nothing in this Agreement shall be or shall be deemed to be a representation or warranty by Licensor as to:

5.1.1 the existence, ownership, validity, enforceability or value of the Licensed Rights and/or the rights granted under this Agreement; or

5.1.2 the suitability or usefulness of the Licensed Rights for any particular purpose, including the development, use and/or Exploitation thereof.

5.2 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, NEITHER PARTY MAKES ANY REPRESENTATIONS OR GRANTS ANY WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, WHETHER WRITTEN OR ORAL OR EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OR ANY WARRANTY AS TO THE VALIDITY OF ANY INTELLECTUAL PROPERTY RIGHT OR THE NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES. FOR THE AVOIDANCE OF DOUBT, THE FOREGOING SHALL NOT BE DEEMED TO LIMIT OR IMPAIR THE REPRESENTATIONS AND WARRANTIES OF THE PARTIES SET FORTH IN THE PURCHASE AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS, AS DEFINED IN SECTION 21.1 OF THIS AGREEMENT.

6. PROSECUTION AND MAINTENANCE OF PATENTS

6.1 Janssen shall have the sole right, but not the obligation, to institute, prosecute or cause to be prosecuted (such institution, prosecution or causation of prosecution collectively, "**Prosecution**"), and control any action or proceeding relating to such Prosecution, at its expense and discretion, in any jurisdiction in the world, all Core Bermekimab Patents.

6.2 Janssen shall have the sole right, but not the obligation, to institute, prosecute or cause to be prosecuted, and control any action or proceeding relating to such Prosecution, at its expense and discretion, in any jurisdiction in the world, all Other Bermekimab Patents; provided that (i) Janssen shall notify XBiotech in writing of any substantive action it intends to take or not take in the prosecution of the Other Bermekimab Patents at least sixty (60) days in advance of any deadline for taking or not taking such action and (ii) [*****]. For the avoidance of doubt, [*****] Janssen shall have the final decision-making authority in the prosecution of the Other Bermekimab Patents under this Section 6.2.

6.3 XBiotech shall have the sole right, but not the obligation, to institute, prosecute or cause to be prosecuted, and control any action or proceeding relating to such Prosecution, at its expense and discretion, in any jurisdiction in the world, all General IL-1α Patents; provided that (i) XBiotech shall notify Janssen in writing of any substantive action it intends to take or not take in the prosecution of the General IL-1α Patents at least sixty (60) days in advance of any deadline for taking or not taking such action and (ii) XBiotech shall consider Janssen's comments in good faith and shall use Commercially Reasonable Efforts to not take positions or make claims, arguments or statements that may have an adverse or negative impact on Janssen's rights in the General IL-1α Patents, prior to taking or not taking such action at its sole discretion, subject to the provisions set forth in this Section 6.3. For the avoidance of doubt, after giving consideration to Janssen's comments pursuant to this Section 6.3, XBiotech shall have the final decision-making authority in the prosecution of the General IL-1α Patents under this Section 6.3.

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

6.4 If Janssen intends not to proceed with the filing, prosecution or maintenance of substantially all claims of a Patent within the Other Bermekimab Patents to which Janssen has the right to transfer the control of prosecution of in a particular jurisdiction or group of jurisdictions, Janssen shall give XBiotech at least sixty (60) days' notice of this intention and such Patent within the Other Bermekimab Patents right shall become a Janssen waived patent (a "Janssen Waived Patent"). If XBiotech intends not to proceed with the filing, prosecution, or maintenance of substantially all claims of a Patent within the General IL-1α Patents to which XBiotech has the right to transfer the control of prosecution of in a particular jurisdiction or group of jurisdictions, XBiotech shall give Janssen at least sixty (60) days' notice of this intention and such Patent within the General 1L-1a Patents shall become a XBiotech waived patent (an "XBiotech Waived Patent"). With respect to each Janssen Waived Patent, XBiotech shall have the right, but not the obligation, to prosecute or cause to be prosecuted, and control further prosecution of that right as if such Janssen Waived Patent was a General IL-1α Patent in accordance with Section 6.3 provided that upon and after XBiotech's exercise of such right, (i) Janssen or one of its licensees agrees to be joined as party to the action if required by an applicable court, or may otherwise join in Janssen's discretion; (ii) Janssen agrees to provide Commercially Reasonable Efforts to assist XBiotech to cause any necessary party to join the action; and (iii) XBiotech agrees that it will not, directly or through any Third Party, take positions or make claims, arguments or statements that are adverse to or may have a negative impact on the Compound. With respect to each XBiotech Waived Patent, Janssen shall have the right, but not the obligation, to prosecute or cause to be prosecuted, and control further prosecution of that right as if such XBiotech Waived Patent was an Other Bermekimab Patent in accordance with Section 6.2 provided that upon and after Janssen's exercise of such right, (i) XBiotech or one of its licensees agrees to be joined as party to the action if required by an applicable court, or may otherwise join in XBiotech's discretion; (ii) XBiotech agrees to provide Commercially Reasonable Efforts to assist Janssen to cause any necessary party to join the action; and (iii) Janssen agrees that it will not, directly or through any Third Party, take positions or make claims, arguments or statements that are adverse to or may have a negative impact on any New Antibody. Janssen will use Commercially Reasonable Efforts to assist XBiotech in assuring that XBiotech has the power and authority to control the prosecution of each Janssen Waived Patent. XBiotech will use Commercially Reasonable Efforts to assist Janssen in assuring that Janssen has the power and authority to control the prosecution of each XBiotech Waived Patent.

6.5 Notwithstanding anything else in this Agreement with respect to the Other Bermekimab Patents, if a Non-Dermatological Indication becomes a Specified Indication pursuant to the Purchase Agreement, then XBiotech shall not have the rights provided under 6.4 for any Other Bermekimab Patent claiming the relevant Specified Indication.

7. INFRINGEMENT, INVALIDITY CLAIMS AND THIRD PARTY CLAIMS

INFRINGEMENT

7.1 If at any time during the Term of this Agreement a Party becomes aware of any Infringement of any of the Licensed Rights (whether such Party is the Licensor or Licensee of such Licensed Right), that Party shall promptly provide to the other Party in writing a notice (an "Infringement Notice") describing all information in its possession relating to the Infringement that it has the right to provide without breaching any obligation of confidentiality to a Third Party.

7.2 Janssen shall have sole control of all aspects of any action or proceeding relating to any Infringement of Core Bermekimab Patents, including determining, at its sole discretion, whether or not to institute any such action or proceeding, its prosecution, defense or settlement (but for the avoidance of doubt shall have no obligation to bring or defend any such action or proceeding), and any award of damages or costs obtained from any such action or proceeding, or any sum obtained pursuant to a settlement of any such action or proceeding, shall accrue solely to the benefit of Janssen. Janssen shall be responsible for its own costs of legal or other representation in respect of any such action or proceeding. On no account shall XBiotech institute any such action or proceeding, without the prior written consent, of Janssen.

7.3 Subject to Section 7.4 of this Agreement, Janssen, with respect to Other Bermekimab Patents, and XBiotech, with respect to General IL-1α Patents, shall solely have control of all aspects of any action or proceeding relating to any Infringement of the applicable Patents, including determining, at its sole discretion, whether or not to institute any such action or proceeding, its prosecution, defense or settlement (but for the avoidance of doubt shall have no obligation to bring or defend any such action or proceeding), and any award of damages or costs obtained from any such action or proceeding, or any sum obtained pursuant to a settlement of any such action or proceeding, shall accrue solely to the benefit of the controlling Party. Each Party will use Commercially Reasonable Efforts to not take positions or make claims, arguments or statements that may have an adverse or negative impact on the other Party's Licensed Rights. Each Party shall be responsible for its own costs of legal or other representation in respect of any such action or proceeding. Except as provided in Section 7.4, on no account shall XBiotech, with respect to Other Bermekimab Patents, or Janssen, with respect to General IL-1α Patents, institute any such action or proceeding, without the prior written consent of the other Party.

7.4 Solely with respect to Section 7.3 above, if either Party does not, within ninety (90) days after its receipt or delivery of an Infringement Notice under Section 7.1 or ten (10) days before the expiration date for filing an appropriate suit or responding to or taking any action (as applicable), initiate and prosecute any legal action to enforce or defend at least one claim of an applicable Patent included in the Licensed Rights with respect to an Infringement action (the "Non-Enforcing Party"), then the other Party shall have the right, but not the obligation, to commence such a suit or take such an action to enforce or defend the applicable Patent included in the Licensed Rights (the "Enforcing Party"). In such event, the Non-Enforcing Party shall take appropriate actions in order to enable the Enforcing Party to commence a suit or take the actions set forth in the preceding sentence. Prior to settling any such suit or action, the Enforcing Party shall notify the Non-Enforcing Party in writing as to the material terms of such proposed settlement and shall not execute such settlement without the Non-Enforcing Party's written consent if the Non-Enforcing Party identifies to the Enforcing Party in reasonable detail a material risk of a material negative impact on the Licensed Rights, taking into account the potential impact on the value of the Compound or New Antibody (as applicable) worldwide as a result of such settlement. Prior to the Enforcing Party commencing such a suit or action, the Enforcing Party shall consider in good faith any reasonable business concerns of which the Non-Enforcing Party notifies the Enforcing Party in writing within ninety (90) days after the Non-Enforcing Party's receipt or delivery of notice under Section 7.1. If either Party identifies to the other Party in reasonable detail a material risk of a material negative impact on the Licensed Rights resulting directly from such a suit or action, taking into account the potential impact on the value of the Compound or New Antibody (as applicable) worldwide, then the other Party shall not commence any such suit or action. If the Enforcing Party recovers monetary damages in such claim, suit or action, such recovery shall be allocated as such: Non-Enforcing Party costs in providing assistance pursuant to this Section 7.4 shall be reimbursed by the Enforcing Party and any remaining recovery in excess of such costs in conducting the litigation shall go to the Enforcing Party.

7.5 Notwithstanding anything else in this Agreement with respect to the Other Bermekimab Patents, if a Non-Dermatological Indication becomes a Specified Indication pursuant to the Purchase Agreement, then XBiotech shall not have the rights provided under 7.4 for any Other Bermekimab Patent claiming the relevant Specified Indication.

INVALIDITY CLAIMS

7.6 If at any time during the Term of this Agreement a Party becomes aware of any Invalidity Claim in respect of any Licensed Rights, that Party shall promptly provide to the other Party in writing a notice (an "Invalidity Notice") describing all information in its possession relating to the Invalidity Claim that it has the right to provide without breaching any obligation of confidentiality to a Third Party.

7.7 Janssen shall have control of all aspects of any action or proceeding relating to the defense of any Invalidity Claim of Core Bermekimab Patents, including determining, at its sole discretion, whether or not to institute or participate in any such action or proceeding, its prosecution, defense or settlement (but for the avoidance of doubt shall have no obligation to bring or defend any such action or proceeding), and any award of damages or costs obtained from any such action or proceeding, or any sum obtained pursuant to a settlement of any such action or proceeding, shall accrue solely to the benefit of Janssen. Janssen shall be responsible for its own costs of legal or other representation in respect of any such action or proceeding. On no account shall XBiotech institute any such action or proceeding, without the prior written consent, of Janssen.

7.8 Subject to Section 7.9 of this Agreement, Janssen, with respect to Other Bermekimab Patents, and XBiotech, with respect to General IL-1α Patents, shall solely have control of all aspects of any action or proceeding relating to the defense of any Invalidity Claim of the applicable Patents, including determining, at its sole discretion, whether or not to institute or participate in any such action or proceeding, its prosecution, defense or settlement (but for the avoidance of doubt shall have no obligation to bring or defend any such action or proceeding), and any award of damages or costs obtained from any such action or proceeding, or any sum obtained pursuant to a settlement of any such action or proceeding shall accrue solely to the benefit of the controlling Party. Each Party will use Commercially Reasonable Efforts to not take positions or make claims, arguments or statements that may have an adverse or negative impact on the other Party's Licensed Rights. Each Party shall be responsible for its own costs of legal or other representation in respect of any such action or proceeding. Except as provided in Section 7.9, on no account shall XBiotech, with respect to Other Bermekimab Patents, or Janssen, with respect to General IL-1α Patents, institute any such action or proceeding, without the prior written consent of the other Party.

7.9 Solely with respect to Section 7.8 above, if either Party does not, within ninety (90) days after its receipt or delivery of an Invalidity Notice under Section 7.6 or ten (10) days before the expiration date for filing an appropriate suit or responding to or taking any action (as applicable), initiate and prosecute any legal action to defend the Licensed Rights with respect to at least one Invalidity Claim of an applicable Patent (the "Non-Defending Party"), then the other Party (the "Defending Party") shall have the right, but not the obligation, to commence such a suit or take such an action to enforce or defend the applicable Patent included in the Licensed Rights. In such event, the Non-Defending Party shall take appropriate actions in order to enable the Defending Party to commence a suit or take the actions set forth in the preceding sentence. Prior to settling any such suit or action related to such Invalidity Claim, the Defending Party shall notify the Non-Defending Party in writing as to the material terms of such proposed settlement and shall not execute such settlement without the Non-Defending Party's written consent if the Non-Defending Party identifies to the Defending Party in reasonable detail a material risk of a material negative impact on the Licensed Rights, taking into account the potential impact on the value of the Compound or New Antibody (as applicable) worldwide as a result of such settlement. Prior to the Defending Party commencing such a suit or action, the Defending Party shall consider in good faith any reasonable business concerns, of which the Non-Defending Party notifies the Defending Party in writing within ninety (90) days after the Non-Defending Party's receipt or delivery of notice under Section 7.6. If either Party identifies to the other Party in reasonable detail a material risk of a material negative impact on the Licensed Rights resulting directly from such a suit or action, taking into account the potential impact on the value of the Compound or New Antibody (as applicable) worldwide, then the other Party shall not commence any such suit or action. If Defending Party recovers monetary damages in such claim, suit or action, such recovery shall be allocated as such: Non-Defending Party costs in providing assistance pursuant to this Section 7.9 shall be reimbursed by the Defending Party and any remaining recovery in excess of such costs in conducting the litigation shall go to the Defending Party.

7.10 Notwithstanding anything else in this Agreement with respect to the Other Bermekimab Patents, if a Non-Dermatological Indication becomes a Specified Indication pursuant to the Purchase Agreement, then XBiotech shall not have the rights provided under 7.9 for any Other Bermekimab Patent claiming the relevant Specified Indication.

7.11 Each Party agrees that at no time through expiration of the Patents included within the Seller Intellectual Property or General IL-1α Patents shall it or any member of its Group challenge or oppose, or commence any action challenging or opposing, directly or indirectly, or assist any other Person or Third Party in challenging or opposing, directly or indirectly, the validity and/or enforceability of any rights of the other Party or any member of its Group in such Patents.

CONDUCT OF LITIGATION

7.12 If a Party initiates (the "**Lead Party**") any enforcement or defense action with respect to Infringement or the defense of any Invalidity Claim as permitted pursuant to this Section 7:

7.12.1 the other Party shall use Commercially Reasonable Efforts to assist the Lead Party in such action (including using reasonable best efforts to ensure that an inventor, under its control, does not take a contrary position to a previous statement made by such inventor, provided that such inventor shall not be required to make statements that are not factual) at the Lead Party's sole expense, including, where necessary, joining any lawsuit or proceeding initiated to defend such Infringement or Invalidity Claim;

7.12.2 the Lead Party shall give the other Party reasonable notice of any substantial change in the scope of the Patent in suit as a result of an Infringement or the defense of any Invalidity Claim; and

7.12.3 the other Party shall not make any admission as to liability and shall not agree to any settlement or compromise of any action or proceeding relating to any such Infringement or Invalidity Claim.

7.13 If a Party has the right to institute or defend any action or proceeding pursuant to this Section 7 (the "**Entitled Party**") but Applicable Law does not permit the Entitled Party to institute or defend such action or proceeding (including, for the avoidance of doubt, where Applicable Law requires that a Party instituting or defending an action must hold the relevant regulatory license), to the extent permitted by Applicable Law, the other Party (the "**Conducting Party**") shall institute or defend such action or proceeding on behalf of, and at the direction of, the Entitled Party, subject to the Conducting Party being indemnified and secured to its reasonable satisfaction by the Entitled Party against all liabilities which may be incurred and all costs and expenses being borne by the Entitled Party.

THIRD PARTY CLAIMS

7.14 If any action, suit or proceeding is brought against a Party or any Affiliate or sub-licensee of a Party alleging that its use of the Licensed Rights infringes the intellectual property rights of a Third Party, each of the Parties shall have the right but not the obligation to defend itself in such action, suit or proceeding at its sole expense. The Parties shall cooperate with each other in any defense of any such suit, action or proceeding. The Parties shall give each other prompt written notice of the commencement of any such suit, action or proceeding, or receipt of any claim of infringement, and shall promptly furnish each other a copy of each communication relating to the alleged infringement.

7.15 Neither Party shall compromise, litigate, settle or otherwise dispose of any such suit, action or proceeding without the other Party's advice and prior written consent, provided that the Party not having the right to defend the suit shall not unreasonably withhold its consent to any settlement that does not have a material adverse effect on its rights, obligations or benefits, either under this Agreement or otherwise.

7.16 The Party first having actual notice of any claim, action or proceeding referenced in Section 7.14 shall promptly notify the other Party in writing, setting forth in reasonable detail, to its knowledge, the facts related to any such claim, action or proceeding. The Parties shall promptly discuss proposed responses thereto.

8. CONFIDENTIALITY

8.1 In this Agreement, **"Confidential Information"** shall, subject to Section 8.2, mean, as specified below, all information, Know-how and data obtained pursuant to or in connection with this Agreement, whether oral, in writing or in any other form, disclosed before, on or after the date of this Agreement by one Party (the **"Disclosing Party"**) to the other Party (the **"Receiving Party"**). For clarity, Know-how that is within the scope of the Licensed Rights granted by XBiotech to Janssen is the Confidential Information of XBiotech as the Disclosing Party. Information provided by the Disclosing Party to the Receiving Party will be Confidential Information as defined in this Section 8:

8.1.1 if a reasonable person in the place of the Receiving Party would reasonably believe that such information was confidential information;

8.1.2 if it is clearly marked or labelled by the Disclosing Party as confidential in nature if disclosed in written or any other tangible form; and/or

8.1.3 if it is specified by the Disclosing Party at the time of disclosure as being confidential if disclosed orally by the Disclosing Party to the Receiving Party.

8.2 In this Agreement, "**Confidential Information**" shall not include any information which the Receiving Party can demonstrate:

8.2.1 was generally available to the public or otherwise part of the public domain at the time of its disclosure to the Receiving Party;

8.2.2 is in or has come into the public domain through no fault of the Receiving Party, its officers, members of its Group, employees, agents, sub-licensees or sub-contractors ("**Representatives**");

8.2.3 is already in the lawful knowledge and possession of the Receiving Party prior to first receiving it from the Disclosing Party, or was otherwise developed independently by the Receiving Party, as evidenced by written records or other documentary proof of actual knowledge by the Receiving Party; and/or

8.2.4 is obtained by the Receiving Party from a Third Party without any obligation of confidentiality and such Third Party is in lawful possession of such information and is not in breach of any contractual or legal obligation to maintain the confidentiality of such information, as evidenced by written records or other documentary proof of such Third Party's disclosure to the Receiving Party.

8.3 The Receiving Party shall, and shall cause its Representatives to, keep confidential and shall not publish or otherwise use or disclose to any Third Party any Confidential Information received from the Disclosing Party except as set out in Section 8.4 below.

8.4 The Receiving Party may:

8.4.1 use Confidential Information received from the Disclosing Party solely to the extent that such use is necessary for the purpose of exercising its rights and/or performing its obligations under this Agreement;

8.4.2 disclose Confidential Information received from the Disclosing Party to its Representatives solely to the extent necessary to enable the Receiving Party to exercise its rights and/or perform its obligations under this Agreement or as required for the proper discharge of its reporting, regulatory or other compliance, administrative, governance or similar duties or obligations, provided that the Receiving Party shall procure that its Representatives (i) do not further disclose the Confidential Information to any Third Party or use it for any purpose other than as set forth in Section 8.4.1 and (ii) are bound by terms of confidentiality equivalent to those in this Section 8;

8.4.3 disclose any part of the Confidential Information received from the Disclosing Party to its professional advisors, attorneys, auditors and bankers provided that the Receiving Party shall be liable for any failure by its professional advisors, attorneys, auditors or bankers to keep such information confidential; and

8.4.4 disclose any part of the Confidential Information received from the Disclosing Party to the extent required by Applicable Law to be included as results of clinical trials posted on clinicaltrial.gov, clinicalstudyresults.org and on any other registry with requirements consistent with the registration and publication guidelines of the International Committee of Medical Journal Editors, solely to the extent required. All data and information posted on clinicaltrial.gov, clinicalstudyresults.org or any other registry will be subject to prior review by the other Party.

8.5 The Receiving Party may disclose any Confidential Information received from the Disclosing Party to any governmental or other regulatory agencies to comply with Applicable Law or regulations, provided the Receiving Party provides to the Disclosing Party prompt prior written notice of its obligation to make such disclosure and takes reasonable and lawful actions to avoid or minimize the degree of such disclosure.

8.6 If the Receiving Party discloses or becomes aware of any unauthorized use or disclosure of Confidential Information received from the Disclosing Party it shall promptly notify the Disclosing Party and promptly take all reasonable steps to prevent further unauthorized use or disclosure.

8.7 The restrictions contained in this Section 8 shall continue to apply for a period of ten (10) years after the expiry or termination of this Agreement or for so long as such information remains confidential, whichever is earlier.

8.8 For the avoidance of doubt, Janssen's use of the Know-how licensed to it pursuant to Section 2.3 in accordance with the terms of such license shall in no way be deemed to violate the provisions of this Section 8, so long as Janssen discloses any such Know-how in connection with the exercise of its rights as permitted under this Agreement and pursuant to a binding enforceable agreement: (i) informing such Person of the confidential nature of such Know-How; (ii) restricting the use of such Know-How to: (A) the subject matter of such agreement or (B) such Persons who have a professional obligation to maintain the confidentiality of such Know-How; and (iii) requiring each Person to whom the disclosure is made to maintain the confidentiality of such Know-How with terms no less stringent than those in this Section 8.

9. TERM

9.1 This Agreement shall come into force on the Commencement Date and, unless terminated earlier in accordance with the provisions of Section 10 of this Agreement, shall continue in force so long as any of the Parties' Granted Rights are valid and in force and effect anywhere in the world (the "**Term**").

10. TERMINATION

10.1 Either Party (the "**terminating Party**") may terminate the license granted by such terminating Party in Section 2 with immediate effect by giving the other Party (the "**non-terminating Party**") written notice of termination if:

10.1.1 the non-terminating Party commits a material breach of Sections 2.2, 2.3, 2.5, 3, 6, 7, 8 or 12 of this Agreement (examples of a material breach of such Sections shall include but not be limited to the non-terminating Party: (i) publishing or otherwise using or disclosing to any Third Party any significant Confidential Information received from the terminating Party (other than in compliance with Section 8); and (ii) assigning its rights under the Agreement in a manner that does not comply with Section 12.3 or 12.4) and has not cured such breach after notice from the terminating Party requesting cure of the breach as specified below; and provided that the terminating Party has given the non-terminating Party the following opportunities to remedy such breach:

(a) the written notice of breach will detail the specific obligation under this Agreement that is alleged to have been breached; the manner of such alleged breach; and the steps to be taken in order to remedy such breach; and

(b) without prejudice to the right of the terminating Party to seek urgent relief, the terminating Party has provided the non-terminating Party with a reasonable amount of time (but no more than ninety (90) days) in which (A) to complete any steps that might be taken to remedy the breach, as stated in the notification of breach; or (B) if completion of those steps is not possible within a 90-day period, to commence those steps required as stated in the notification of breach, on the condition that the non-terminating Party continues to perform those steps with due diligence and the breach can be cured within a mutually agreeable period of time.

10.2 All rights and licenses granted to Licensee under or pursuant to this Agreement are, and will otherwise be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (the "Code") and any similar laws in any other country, licenses of rights to "intellectual property" as defined under Section 101 of the Code. Licensee of such rights under this Agreement, will retain and may fully exercise all of its protections, rights and elections under the Code and any similar laws in any other country. All rights, powers and remedies provided for in this Section 10.2 are in addition to and not in substitution for any and all other rights, powers and remedies now or hereafter existing at law or in equity (including under the Code and any similar laws in any other country). If voluntary or involuntary proceedings by or against a Party are instituted in bankruptcy under any insolvency law, or a receiver or custodian is appointed for such Party, or proceedings are instituted by or against such Party for corporate reorganization, dissolution, liquidation or winding up of such Party, which proceedings, if involuntary, shall not have been dismissed within sixty (60) days after the date of filing, or if such Party makes an assignment for the benefit of creditors, or substantially all of the assets of such Party are seized or attached and not released within sixty (60) days thereafter, the other Party may immediately terminate this Agreement effective upon notice of such termination.

10.3 For the avoidance of doubt, the right to terminate this Agreement in accordance with this Section is not exclusive of any rights, powers and remedies provided by law.

11. EFFECT OF EXPIRY OR TERMINATION

11.1 Upon the expiry or termination of this Agreement for whatever reason:

11.1.1 the licenses and non-assertion rights granted under Section 2 (together with all corresponding sub-licenses) shall immediately terminate and each Licensee shall, and shall procure that its sub-licensees and sub-contractors shall, forthwith cease all activities for which a license is granted under this Agreement;

11.1.2 each Receiving Party shall use Commercially Reasonable Efforts to promptly (a) return to the Disclosing Party or destroy all hard copies of Confidential Information; and (b) delete and make no attempts to recover all soft copies of Confidential Information, in each case disclosed to the Receiving Party by or on behalf of the Disclosing Party whether in the possession or control of the Receiving Party or any of its Representatives (notwithstanding the foregoing, the Receiving Party may retain copies of Confidential Information stored on backup disks or in backup storage facilities automatically produced in the ordinary course of business; any Confidential Information so retained will be held subject to the confidentiality and use limitations set forth in Section 8).

11.2 Expiry or termination of this Agreement shall not affect any rights or liabilities accrued under this Agreement prior to such expiry or termination.

12. ASSIGNMENT AND TRANSFER

12.1 This Agreement shall be binding on and shall inure for the benefit of the successors of the Parties.

12.2 Subject to Sections 3, 12.3 12.4, 12.5 and 12.6, neither Party may assign, transfer, charge or dispose in any way of any of its rights or obligations under this Agreement, or part thereof (or purport to do any such thing) to a Third Party that is not an Affiliate without the other Party's prior written consent.

12.3 XBiotech shall not transfer its rights under Section 2.2 to a Third Party except to: (i) an Affiliate, (ii) a successor in all of XBiotech's rights in the Granted Rights, (iii) exclusive licensees of XBiotech's rights in the Granted Rights or (iv) Persons performing services or activities in support of any of XBiotech's rights in the Granted Rights. Janssen has the right to transfer its rights in the Granted Rights without restriction; provided that Janssen shall not transfer its rights under Section 2.3 to a Third Party in a manner that allows Janssen to retain substantially the same rights that it transfers to such Third Party subsequent to such transfer.

12.4 Subject to Section 12.3, each Licensor may grant licenses, assign or otherwise transfer any right, title or interest in any of the respective rights under which they grant a non-exclusive license to the other party pursuant to this Agreement and Janssen may grant licenses, assign or otherwise transfer any right, title or interest in any of the Core Bermekimab Patents that are the subject of the non-assertion rights granted in Section 2.2, provided that any such grant is made subject to the terms and conditions of this Agreement, and further provided that such Licensor procures that licensee, assignee or transferee complies with and is bound by the provisions of this Agreement as if such licensee, assignee or transferee were a party to this Agreement, including the licenses or, in respect of the Core Bermekimab Patents, the non-assertion rights granted by such Licensor under Section 2, provided that any act of licensee, assignee or transferee which would if committed by such Licensor be a breach of this Agreement shall be treated for the purposes of this Agreement as an equivalent breach by such licensee, assignee or transferee of the terms of this Agreement.

12.5 Each Party in its role as Licensor or as the grantor of non-assertion rights in Section 2 may assign its rights under this Agreement to any member of its Group. Such Party acknowledges and agrees:

12.5.1 that any such assignment will be in respect of the whole of this Agreement and not any part thereof;

12.5.2 that any such assignment would not reduce the scope of any non-assertion rights or rights licensed to the other Party in its role as Licensee or as recipient of non-assertion rights under Section 2 of this Agreement;

12.5.3 to provide the other Party in its role as Licensee or as recipient of non-assertion rights under Section 2 if this Agreement with notice of such assignment promptly after completion of such assignment; and

12.5.4 such Party in its role as Licensor or as the grantor of non-assertion rights in Section 2 shall procure that the assignee shall assume the obligations of such Party, including the licenses and non-assertion provisions granted by such Party under Section 2, provided that any act of the assignee which would if committed by such Party be a breach of this Agreement shall be treated for the purposes of this Agreement as an equivalent breach by such assignee of the terms of this Agreement.

12.6 Each Party in its role as Licensee or as a recipient of non-assertion rights under Section 2 may assign its rights under this Agreement to a member of its Group. Such Party acknowledges and agrees:

12.6.1 that any such assignment will be in respect of the whole of this Agreement and not any part thereof;

12.6.2 that any such assignment would not expand the scope of any non-assertion rights or rights licensed by the other Party in its role as Licensor or grantor of non-assertion rights under Section 2 of this Agreement;

12.6.3 to provide the other Party in its role as Licensor or grantor of non-assertion rights under Section 2 of this Agreement with notice of such assignment promptly after completion of such assignment; and

12.6.4 that such Party in its role as Licensee or as a recipient of non-assertion rights under Section 2 shall procure that the assignee shall assume the obligations of such Party, provided that any act of the assignee which would if committed by such Party be a breach of this Agreement shall be treated for the purposes of this Agreement as an equivalent breach by such assignee of the terms of this Agreement.

13. ANNOUNCEMENTS

13.1 Subject to Section 13.2 of this Agreement and Section 5.9 of the Purchase Agreement, no announcement concerning this Agreement or any ancillary matter shall be made by any Party without the prior written approval of the other Party, such approval not to be unreasonably withheld or delayed.

13.2 A Party may make an announcement concerning this Agreement (or any aspect of it) if and only to the extent required by:

(i) the Applicable Laws of any relevant jurisdiction; or

(ii) any Governmental Entity or any Tax Authority to which any Party is subject or submits, wherever situated whether or not the requirement has the force of law;

13.3 in which case the Party concerned shall take all such steps as may be reasonable and practicable in the circumstances to agree to the contents of such announcement with the other Party before making such announcement.

14. REMEDIES AND WAIVERS

14.1 No delay or omission by any Party in exercising any right, power or remedy provided by law or under this Agreement or any document referred to in it shall:

(i) impair or affect such right, power or remedy; or

(ii) operate as a waiver of it.

14.2 The failure of any Party to exercise any right, power or remedy provided under this Agreement or otherwise available in respect hereof at law or in equity, or to insist upon compliance by any other Party with its obligations hereunder, shall not constitute a waiver by such Party of its right to exercise any such or other right, power or remedy or to demand such compliance.

14.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law unless otherwise stated herein.

15. NOTICES

15.1 Any notice or other communication given or made under, or in connection with the matters contemplated by, this Agreement shall only be effective if it is in writing. Such writing may be delivered to a Party by courier or in portable document (.pdf) format by electronic mail which becomes effective upon acknowledgement by the receiving Party.

15.2 Any such notice or communication shall be sent to a Party at its address and for the attention of the individual set out below:

(a) for the attention of the individual set out below:

Name of Party	Address
Janssen Biotech, Inc.	Janssen Biotech, Inc. 800 Ridgeview Drive Horsham, PA 19044 Attention: President
With copies, which shall not constitute notice, to:	Johnson & Johnson Law Department One Johnson & Johnson Plaza New Brunswick, NJ 08933

Name of Party	Address: Attention: General Counsel, Pharmaceuticals
	Cravath, Swaine & Moore LLP Worldwide Plaza 825 Eighth Avenue New York, New York 10019 Attention: Robert I. Townsend, III, Esq. Jenny Hochenberg, Esq
XBiotech, Inc.	XBiotech. Inc. 5217 Winnebago Lane Austin, Texas 78744 Attention: John Simard
With a copy, which shall not constitute notice, to:	Bryan Cave Leighton Paisner LLP 120 Broadway, Suite 300 Santa Monica, California 90401 Attention: David G. Andersen

PROVIDED THAT a Party may change its notice details by giving notice to the other Party of the change in accordance with this Section 15. That notice shall become effective on the date falling five (5) Business Days after the notification has been received or such later date as may be specified in the notice.

15.3 Any notice or communication given or made under, or in connection with the matters contemplated by, this Agreement shall, in the absence of earlier receipt, be deemed to have been duly given as follows:

(i) if delivered personally, on delivery;

(ii) if sent by overnight courier service, two (2) clear Business Days after the date of dispatch; and

(iii) if sent by any other method permitted by this Section, three (3) clear Business Days after the date of posting.

15.4 Any notice or communication given or made under, or in connection with the matters contemplated by, this Agreement outside Working Hours in the place to which it is addressed shall be deemed not to have been given until the start of the next period of Working Hours in such place.

16. NO PARTNERSHIP

16.1 Nothing in this Agreement and no action taken by the Parties shall constitute a partnership, association, joint venture or other co-operative entity between the Parties.

17. COSTS AND EXPENSES

17.1 Except as otherwise stated in this Agreement, each Party shall pay its own costs and expenses in relation to the preparation, execution and carrying into effect of this Agreement and all other documents entered into pursuant to, or in connection with, it.

18. COUNTERPARTS

18.1 This Agreement may be executed (including by PDF copy) in any number of counterparts, and by Licensor and Licensee on separate counterparts, but shall not be effective until each Party has executed at least one counterpart.

18.2 Each counterpart shall constitute an original of this Agreement, but the counterparts shall together constitute but one and the same instrument.

19. NO RIGHTS IN THE COMPOUND

19.1 Notwithstanding anything in this Agreement, for the avoidance of doubt, no rights whatsoever to the Compound are conveyed by any provision of this Agreement.

20. NO CONFLICTING OBLIGATION

20.1 After the Commencement Date, each Party agrees that it will not enter into any agreement that conflicts with, results in a material breach of, or constitutes a default under, such Party's obligations under Section 2 of this Agreement.

21. ENTIRE AGREEMENT

21.1 This Agreement, the Purchase Agreement, and any other agreements entered into pursuant to this Agreement or the Purchase Agreement (the "**Transaction Documents**"), constitute the whole and only agreement between the Parties relating to the Acquisition and, save if and only to the extent expressly repeated in any of the Transaction Documents, supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, relating thereto.

21.2 This Agreement may only be amended by a document signed by each of the Parties. For this purpose, an amendment to this Agreement shall include any addition, deletion, supplement or replacement, howsoever effected.

21.3 The Parties acknowledge and agree that any amendment to this Agreement between the date hereof and the Closing Date is subject to the written consent of each Party.

22. INVALIDITY

22.1 If, at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair:

22.1.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or

22.1.2 the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

23. FURTHER ASSURANCE

23.1 Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

24. THIRD PARTY BENEFICIARIES

24.1 The Parties acknowledge and agree that this Agreement is for the sole benefit of the Parties.

25. GOVERNING LAW

25.1 This Agreement shall be governed by and construed in accordance with the laws of the state of New York, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

IN WITNESS of which this Agreement has been duly executed by the Parties on the date first written above.

Janssen Biotech, Inc.

/s/ Austin Clayton
Name: Austin Clayton

Name:

XBiotech, Inc.

/s/ John Simard
Name: John Simard

Name:

[Signature Page to IP License Agreement]

EXHIBIT 2.4(b)(iv)

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

CLINICAL MANUFACTURING AGREEMENT

BY AND BETWEEN

XBIOTECH USA, INC.

AND

JANSSEN RESEARCH & DEVELOPMENT LLC

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Exhibit List

CLINICAL MANUFACTURING AGREEMENT

This **CLINICAL MANUFACTURING AGREEMENT** (this "**Agreement**") is entered into as of December 30, 2019 (the "**CMA Effective Date**"), by and between **JANSSEN RESEARCH & DEVELOPMENT LLC**, a Pennsylvania corporation, having its principal place of business at 800/850 Ridgeview Drive, Horsham, PA 19044 (hereinafter "**Company**"), and **XBIOTECH USA, INC.**, a Delaware corporation, having its principal place of business at 5217 Winnebago Lane, Austin, TX 78744 ("**SUPPLIER**"). Company and SUPPLIER are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

WHEREAS, XBiotech Inc., an Affiliate of SUPPLIER, and Janssen Biotech, Inc., an Affiliate of Company, have entered into that certain Asset Purchase Agreement, dated as of December 7, 2019 (the "**Asset Purchase Agreement**"); and

WHEREAS, pursuant to Section 2.4(b)(iv) and Section 2.4(c)(v) of the Asset Purchase Agreement, the Parties desire to enter into this Agreement for the Manufacture and supply of Clinical Products by SUPPLIER to Company, subject to the terms and conditions set forth herein; and

WHEREAS, this Agreement constitutes the Clinical Manufacturing Agreement contemplated by the Asset Purchase Agreement.

NOW, THEREFORE, in consideration of the foregoing and the premises and conditions set forth herein, the Parties agree as follows:

Article 1
DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth in this Article 1, or if not defined in this Article 1, shall have the meanings set forth in the Asset Purchase Agreement:

"**Additional Equipment**" shall have the meaning set forth in Section 2.2.2.

"**Additional Specification**" shall have the meaning set forth in Section 5.3.1.

"**Affiliate**" means, with respect to a particular Person and a particular time, another Person that controls, is controlled by or is under common control with such first Person at any such time during the Term. For the purposes of this definition, the word "control" (including, with correlative meaning, the terms "controlled by" or "under the common control with") means the actual power, either directly or indirectly through one or more intermediaries, to direct or cause the direction of the management and policies of a Person, whether by the ownership of fifty percent (50%) or more of the voting stock of such Person, by contract, or otherwise.

"**Agreement**" shall have the meaning set forth in the preamble.

"**AKA**" shall have the meaning set forth in Exhibit C.

"**Backup Equipment**" shall have the meaning set forth in Section 2.2.3.

"**Business Day**" means a day other than Saturday, Sunday or any other day on which banking institutions in New York, New York are closed for business.

"**Clinical Product**" means Product and placebo for use in clinical trials, in the form of bulk drug substance, pre-filled syringes or vials, in each case as further described in the Specifications or the Additional Specifications.

"**Clinical Product Action**" shall have the meaning set forth in Section 5.6.1.

"**Clinical Product Action Notice**" shall have the meaning set forth in Section 5.6.1.

"**Clinical Product Requirements**" shall have the meaning set forth in Section 5.2.

"**CMA Effective Date**" shall have the meaning set forth in the preamble.

"**Company**" shall have the meaning set forth in the preamble.

"**Compound**" means the monoclonal antibody known as bermekimab (MABp1), the sequence of which is set forth in Schedule 1.1(c) to the Asset Purchase Agreement.

"**CPR Mediation Procedure**" shall have the meaning set forth in Section 9.2.1.

"**CPR Rules**" shall have the meaning set forth in Section 9.3.1.

"**Current Capacity**" means, in the case of Clinical Products [*****] up to [*****] per month (or up to [*****] per calendar year), in each case irrespective of the drug concentration in the formulation included in such [*****].

"**Dispute**" shall have the meaning set forth in Section 9.1.

"**EMA**" means the European Medicines Agency or any successor agency(ies) or authority having substantially the same function.

"**FCA**" shall have the meaning set forth in Exhibit C.

"**FCPA**" shall have the meaning set forth in Exhibit C.

"**FDA**" means the U.S. Food and Drug Administration and any successor agency(ies) or authority having substantially the same function.

"**FFDCA**" means the U.S. Federal Food, Drug, and Cosmetic Act (21 U.S.C. §301 et seq.), as amended from time to time.

"**Firm Order**" shall have the meaning set forth in Section 2.3.2.

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

"**Force Majeure**" means any event beyond the reasonable control of the affected Party, which may include embargoes; war or acts of war, including terrorism; insurrections, riots, or civil unrest; strikes, lockouts or other labor disturbances; epidemics, fire, floods, earthquakes or other acts of nature; acts, omissions or delays in acting by any Governmental Authority (other than delays incident to the ordinary course of drug development); and failure of plant or machinery.

"**Forecast Schedule**" shall have the meaning set forth in Section 2.3.1.

"**Good Manufacturing Practices**" or "**GMP**" means the then-current good manufacturing practices required by the FFDCA, as amended, and the regulations promulgated thereunder by the FDA at 21 C.F.R. Parts 210 and 211, for the manufacture and testing of pharmaceutical materials, and comparable Law related to the manufacture and testing of pharmaceutical materials in jurisdictions outside the U.S., including the quality guideline promulgated by the ICH designated ICH Q7A, titled "Q7A Good Manufacturing Practice Guidance for Active Pharmaceutical Ingredients" and the regulations promulgated thereunder, in each case as they may be updated from time to time.

"**International Public Organization**" means any of the organizations listed in 8 C.F.R. § 316.20, as amended from time to time.

"**Know-How**" shall have the meaning set forth in the IP License Agreement.

"**Licensed Space**" shall have the meaning set forth in the License to Occupy.

"**Licensed Rights**" shall have the meaning set forth in the IP License Agreement, in respect of licenses granted thereunder by SUPPLIER.

"**Manufacture**" means all activities and processes related to the manufacturing of any pharmaceutical product, or any ingredient thereof, including purchasing raw materials and intermediates, producing active pharmaceutical ingredient, formulating, and all labeling, packaging, in-process and finished product testing, storage and release of pharmaceutical product or any component or ingredient thereof, performance of quality assurance activities related to manufacturing and release of pharmaceutical product, and the performance of ongoing stability tests and regulatory activities related to any of the foregoing. When used as a verb, to "Manufacture" means to engage in Manufacturing activities.

"**Manufacturing Capacity**" means the Current Capacity unless the Parties agree upon a new Manufacturing Capacity, including in connection with the installation of Additional Equipment, as provided in Section 2.2.2 below.

"**Manufacturing Process**" means the processes and activities (and each step in the processes and activities) planned to be used to Manufacture Clinical Products as described in the master batch record for such Clinical Products, which shall be mutually agreed by the Parties and documented in writing.

"**Manufacturing Representative**" has the meaning set forth in Section 5.9.

"**Manufacturing Sites**" means facilities of SUPPLIER or its Affiliates where Clinical Products are Manufactured from time to time.

"**Materials**" means active pharmaceutical ingredients, raw ingredients, intermediaries, excipients, processing aids, packaging materials and any other components used in the Manufacture of Clinical Product.

"**Nonconforming Clinical Product**" shall have the meaning set forth in Section 5.2.

"**Nonconformity**" shall have the meaning set forth in Section 5.2.

"**Officials**" shall have the meaning set forth in Section 6.2.2.

"**Party**" and "**Parties**" shall have the meaning set forth in the preamble.

"**Payment**" shall have the meaning set forth in Section 6.2.2.

"**Person**" means an individual, sole proprietorship, partnership, limited partnership, limited liability partnership, corporation, limited liability company, business trust, joint stock company, trust, incorporated association, joint venture or similar entity or organization, including a government or political subdivision, department or agency of a government.

"**Product**" means any pharmaceutical product containing the Compound, including all dosage forms, presentations, formulations and line extensions thereof, including a pharmaceutical product which is comprised of the Compound and other pharmaceutically active compound(s) and/or ingredients, any prototypes thereof and any variations thereof.

"**Purchase Order**" shall have the meaning set forth in Section 2.4.1.

"**Quality Agreement**" shall have the meaning set forth in Section 5.4.

"**Quarterly Fee**" shall have the meaning set forth in Section 3.1.

"**Quarterly Manufacturing Capacity**" means, with respect to any calendar quarter, the Manufacturing Capacity for such calendar quarter, being calculated as three (3) times the Manufacturing Capacity per month.

"**Regulatory Authority**" means any applicable Governmental Authority with authority over the Manufacture or Exploitation of a pharmaceutical product in a country or jurisdiction, including (a) in the U.S., the FDA, and (b) in the European Union, the EMA.

"**Specifications**" shall have the meaning set forth in Section 5.2.

"**SUPPLIER**" shall have the meaning set forth in the preamble.

"**Term**" shall have the meaning set forth in Section 8.1.

"**Third Party**" means any Person other than (a) Company, (b) SUPPLIER, or (c) an Affiliate of either of Company or SUPPLIER.

"**U.S.**" means the United States of America, including its territories and possessions.

"**UKBA**" shall have the meaning set forth in Exhibit C.

Article 2
CLINICAL PRODUCT MANUFACTURE AND SUPPLY

2.1 Manufacture and Supply.

During the Term and pursuant to the terms of this Agreement, SUPPLIER shall supply to Company all of Company's requirements of Clinical Products, except as otherwise permitted by this Agreement or mutually agreed by the Parties in accordance with this Agreement.

2.2 Materials and Capacity.

2.2.1 Prioritization. During the Term, and subject to Company's compliance with its obligations hereunder, SUPPLIER shall use reasonable best efforts to maintain capacity adequate to fulfill Company's requirements of Clinical Products, as set forth in the applicable Forecast Schedule. If at any time during the Term, SUPPLIER is unable to Manufacture and supply all of the quantities of Clinical Products forecasted or ordered by Company hereunder, on the one hand, and all of the quantities of products desired by SUPPLIER, its Affiliates and their Third Party customers, on the other hand, due to (a) shortages of Materials that are used in both the Manufacture of Clinical Products and in the Manufacture of products for SUPPLIER, its Affiliates or their Third Party customers or (b) constraints on the capacity at the Manufacturing Sites, then SUPPLIER shall allocate Materials and capacity (including, for the avoidance of doubt, the use of any Additional Equipment) (i) first, to the Manufacture and supply of Clinical Products for Company and (ii) second, only to the extent of any remaining Materials and/or capacity, to the Manufacture and supply of products for SUPPLIER, its Affiliates or their Third Party customers.

2.2.2 Additional Equipment. If, at any time during the Term, notwithstanding SUPPLIER'S compliance with Section 2.2.1, SUPPLIER is unable to Manufacture and supply all of the quantities of Clinical Products forecasted or ordered by Company hereunder due to constraints on the capacity at the Manufacturing Sites, SUPPLIER shall (i) promptly provide Company with written notice thereof and (ii) promptly provide such information as is reasonably requested by Company to enable Company to determine whether such constraints could be alleviated (in whole or in part) through the acquisition of additional equipment. If Company determines that such constraints could be alleviated (in whole or in part) through the acquisition of additional equipment, Company may, in its sole discretion, direct SUPPLIER to (and, upon such direction, SUPPLIER shall) acquire such additional equipment ("**Additional Equipment**") at [*****] cost. In connection with the acquisition of any Additional Equipment, the Parties shall agree to an updated Manufacturing Capacity. [*****] shall retain title to any Additional Equipment following any expiration or termination of this Agreement, other than the termination of this Agreement by [*****] pursuant to Section 8.3 (in which case [*****] shall be deemed to have been granted such title as of such termination).

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

2.2.3 Backup Equipment. At any time during the Term, Company may, in its sole discretion, direct SUPPLIER to (and, upon such direction, SUPPLIER shall) acquire additional equipment to be used in the event that any of SUPPLIER'S equipment is temporarily or permanently rendered inoperative ("**Backup Equipment**") at [*****] cost. SUPPLIER agrees that, during the Term, it shall use any such Backup Equipment only to the extent necessary to Manufacture and supply Clinical Products for Company, and for no other purpose. [*****] shall retain title to any Backup Equipment following any expiration or termination of this Agreement, other than the termination of this Agreement by [*****] pursuant to Section 8.3 (in which case [*****] shall be deemed to have been granted such title as of such termination).

2.2.4 Calculation of Costs; Invoicing. Costs for Additional Equipment or Backup Equipment shall include, in addition to acquisition costs for such Additional Equipment or Backup Equipment, all reasonable documented out-of-pocket costs incurred by [*****] with respect to the acquisition, installation, testing and validation of such Additional Equipment or Backup Equipment. [*****] shall include any such costs actually incurred [*****] together with reasonably detailed supporting documentation therefor.

2.3 Forecasts.

2.3.1 Monthly Forecast Schedule. On the CMA Effective Date and within the first two weeks of each month commencing following the CMA Effective Date, Company shall submit to SUPPLIER a written, good faith rolling forecast of Company's monthly requirements for Clinical Products for at least the following [*****] months or such shorter period remaining under the Term (each such forecast, a "**Forecast Schedule**"). The initial Forecast Schedule is attached hereto as Exhibit A.

2.3.2 Binding Commitment. The first [*****] months of each Forecast Schedule provided by Company shall be a binding commitment on Company to purchase from SUPPLIER, and, so long as such quantities are within the then-current Manufacturing Capacity, a binding commitment on SUPPLIER to sell to Company, the specified volume of Clinical Products set forth therein (each, a "**Firm Order**"). For the avoidance of doubt, any months of a Forecast Schedule beyond the Firm Order period shall be non-binding.

2.4 Purchase Orders

2.4.1 All Clinical Product shall be supplied pursuant to purchase orders (each, a '**Purchase Order**") submitted by Company to SUPPLIER. Each Purchase Order shall be consistent with the corresponding Firm Order and shall contain such Purchase Order number, quantities, order schedule, delivery locations, carrier information and other information reasonably necessary to permit correct delivery of Clinical Products for shipment, including such information and in a format as may be reasonably requested by SUPPLIER.

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

2.4.2 Exclusive Terms. This Agreement and the Quality Agreement set forth the exclusive contract terms between the Parties for, and shall apply to, all orders for Clinical Products. Any terms in any Firm Order, Purchase Order, invoice or other notice submitted by either Party to the other Party that are different from or additional to the provisions hereof shall be null and void notwithstanding SUPPLIER's delivery of, and Company's acceptance of, Clinical Products under any Firm Order, Purchase Order, invoice or other notice containing such terms.

2.5 Packaging.

SUPPLIER shall be responsible for packaging Clinical Products in accordance with the Specifications and the Quality Agreement.

2.6 Delivery of Clinical Products.

SUPPLIER shall deliver Clinical Products to Company DAP (Incoterms 2010) at the location, and within [*****] days of (before or after) the delivery date, requested in the applicable Purchase Order. For the avoidance of doubt, SUPPLIER shall retain risk of loss to any Clinical Product unless and until such Clinical Product has been delivered to Company at such location as specified in the applicable Purchase Order. SUPPLIER shall provide Company notice of the anticipated delivery date at least three (3) days prior to delivery, and if such anticipated delivery date changes, SUPPLIER shall promptly provide Company notice of such change.

Article 3
PRICING; PAYMENT

3.1 Supply Price.

3.1.1 Subject to Section 3.1.2, for each calendar quarter during the Term, Company shall pay SUPPLIER in consideration for the Manufacture and supply of Clinical Products (which, for the avoidance of doubt, shall include Company's right to occupy the Licensed Space pursuant to the License to Occupy) a fee of [*****] for such quarter (the "**Quarterly Fee**"). For purposes of this Agreement, references to "calendar quarters" in this Agreement shall include the calendar quarters (or partial calendar quarters) (i) beginning on the CMA Effective Date and (ii) ending on the last day of the Term.

3.1.2 If the Term includes any partial calendar quarter, the Quarterly Fee payable in respect of such partial calendar quarter shall be prorated based on the number of days in such partial calendar quarter (as compared to the number of days in a full calendar quarter).

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

3.1.3 If, during any calendar quarter, SUPPLIER fails to deliver all of the Clinical Products specified in one or more Purchase Orders to be delivered to Company during such calendar quarter, the Quarterly Fee payable in respect of the next calendar quarter shall be reduced by the percentage of Clinical Products not so delivered as compared to the Clinical Products so specified for delivery; provided that there shall be no such reduction to the extent such Clinical Products not so delivered were in excess of the Quarterly Manufacturing Capacity with respect to such calendar quarter.

3.1.4 If Company is entitled to a prorated or reduced Quarterly Fee pursuant to Section 3.1.2, Section 3.1.3 and/or Section 5.5.2(c), but has already paid such Quarterly Fee, SUPPLIER shall promptly reimburse Company for the difference between the Quarterly Fee paid and the prorated or reduced Quarterly Fee that was actually owed. If the application of Section 3.13 and/or Section 5.5.2(c) would result in a reduction to a future Quarterly Fee, but no such future Quarterly Fee is payable hereunder, SUPPLIER shall promptly reimburse Company in an amount equal to the amount that such future Quarterly Fee would have been reduced.

3.2 Invoices and Payments.

3.2.1 The first Quarterly Fee shall be payable within [*****] days of the CMA Effective Date. Thereafter, invoices with respect to each calendar quarter (or partial calendar quarter) shall be provided to Company no more than [*****] days prior to the first day of such calendar quarter. Payment terms will be net [*****] days after Company's receipt of an uncontested invoice from SUPPLIER; provided, however, the actual payment to SUPPLIER from Company or its designee will not be made until the next scheduled payment run as set forth at www.ap.jnj.com. Company may contest any invoice or portion thereof if (i) it reasonably believes that the charges reflected therein do not accurately reflect a proration or reduction in the Quarterly Fee required under Section 3.1.2, 3.1.3 and/or 5.5.2(c) or (ii) it disputes any of the costs included in such invoice pursuant to Section 2.2.4, in each case by providing notice to SUPPLIER of such dispute within [*****] days of its receipt of such invoice Once the matter is resolved, Company shall pay the appropriate charges. SUPPLIER shall continue to perform its obligations under this Agreement during such dispute. If an invoice is disputed in part, SUPPLIER may issue a new invoice in compliance with this Section 3.2.1 reflecting solely the undisputed charges, and any such invoice shall be payable within [*****] days after receipt thereof; provided, however, the actual payment to SUPPLIER from Company or its designee will not be made until the next scheduled payment run as set forth at www.ap.jnj.com.

3.2.2 SUPPLIER shall not invoice Company hereunder, and no claim for payments will be considered with respect to Clinical Products Manufactured hereunder prior to both Parties' duly authorized representatives signing this Agreement and Company issuing a purchase order number to SUPPLIER with respect to the services provided hereunder, provided that Company shall use reasonable best efforts to issue such purchase orders at such times and in such manner as will facilitate payments in accordance with this Section 3.2.

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

Article 4
TRANSITION

4.1 Transition.

4.1.1 During the Term and for the [*****] months after the expiration or termination of this Agreement, the Parties shall cooperate and use reasonable best efforts to enable the prompt transition of the Manufacture and supply of Product from the existing Manufacturing processes of SUPPLIER at the Manufacturing Sites to new Manufacturing processes of Company at facilities designated by Company at no additional cost. SUPPLIER shall provide reasonable technical assistance, including (i) information and Know-How in its control and related to Product or the Compound (including any information described on Exhibit H) and (ii) introductions and access to SUPPLIER'S suppliers of Materials, in each case as requested by Company to facilitate the foregoing.

4.1.2 In the event that SUPPLIER is unable to fulfill all of Company's requirements for Clinical Products (as a result of constraints on capacity, Force Majeure, insolvency, bankruptcy or otherwise), upon Company's request, SUPPLIER shall transfer existing Manufacturing processes for the Compound and Products to Company (or its designee) and provide reasonable technical assistance to Company (or its designee), including introductions and access to SUPPLIER'S suppliers of Materials, to the extent reasonably necessary to enable Company to Manufacture the Compound and Products during the Term.

4.1.3 In the event that SUPPLIER is unable to fulfill all of Company's requirements for Clinical Products (as a result of constraints on capacity, Force Majeure, insolvency, bankruptcy or otherwise), upon Company's request, SUPPLIER will transfer any other information and Know-How in its control reasonably requested by Company in order to enable Company to Manufacture the Compound and Products during the Term, including (a) complete sets of any preclinical or clinical data generated by or on behalf of SUPPLIER with respect to the Compound or any Products, (b) raw data tables with respect to the data described in clause (a), (c) Chemistry, Manufacture and Control (CMC) data or information generated by or on behalf of SUPPLIER with respect to the Compound or any Product, (d) any information described on Exhibit H and (e) any other Know-How that is necessary or specifically useful for the Manufacture of the Compound or Products, in each case to the extent that such information or know-how was not previously provided by SUPPLIER to Company.

4.1.4 Any Know-How or Trade Secrets transferred or otherwise provided by SUPPLIER to Company or its designee pursuant to this Article 4 shall be deemed to be Licensed Rights, with respect to SUPPLIER as Licensor and Company as Licensee under the IP License Agreement, unless and solely to the extent such Know-How or Trade Secrets is Seller Intellectual Property.

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

Article 5
SPECIFICATIONS AND QUALITY CONTROL MATTERS

5.1 Compliance with Law.

SUPPLIER will, and will cause its Affiliates to, comply with applicable Laws, including GMP, in performing Manufacturing activities with respect to Clinical Products.

5.2 Clinical Product Requirements.

SUPPLIER hereby represents, warrants and covenants to Company that Clinical Products supplied to Company under this Agreement shall be Manufactured in accordance with the Manufacturing Process, applicable Laws (including GMP), the Quality Agreement and the policies of Company set forth on Exhibit D and Exhibit E hereto (the "**Manufacturing Methods and Procedures**"). SUPPLIER hereby further represents, warrants and covenants to Company that Clinical Products supplied to Company under this Agreement shall, at the time of delivery, (a) conform to the applicable Clinical Product specifications set forth on Exhibit B hereto or, to the extent applicable, the Quality Agreement (as such specifications may be amended from time to time in accordance with Section 5.3.2 or the Quality Agreement, the "**Specifications**") or the applicable Additional Specifications, (b) have at least [*****] months shelf life from the date of filling of the drug product into syringes or vials and (c) conform to the volume and form (i.e., bulk drug substance, prefilled syringes or vials) ((a), (b) and (c) collectively, the "**Clinical Product Requirements**"). Any supply of Clinical Products that does not satisfy the Clinical Product Requirements at the time that such supply is released by SUPPLIER or its Affiliate to Company is referred to in this Agreement as "**Nonconforming Clinical Product**" and shall be regarded as having a "**Nonconformity**."

5.3 Specifications.

5.3.1 During the Term, SUPPLIER shall use reasonable best efforts to develop additional formulations of Clinical Products as described on Exhibit G hereto. SUPPLIER and Company shall cooperate and use reasonable best efforts to agree on Clinical Product specifications for such additional formulations (such agreed specifications, as such specifications may be amended from time to time in accordance with Section 5.3.2 or the Quality Agreement, the "**Additional Specifications**"). For the avoidance of doubt, once Additional Specifications have been agreed, Company shall be permitted to place Purchase Orders in respect of the Clinical Products represented by such Additional Specifications. If, during the Term, Company determines that additional formulations of Clinical Products not set forth on Exhibit G are necessary, SUPPLIER may from time to time cooperate with Company to develop such formulations and any Additional Specifications with respect thereto, subject to the mutual agreement of the Parties with respect to the terms and conditions applicable to the activities described in this sentence (it being understood that the additional formulations set forth on Exhibit G hereto are not subject to this sentence and are instead subject to the first sentence of this Section 5.3.1 and shall be at no additional cost to Company).

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

5.3.2 During the Term, if Company proposes any change(s) to the Specifications or Additional Specifications based on any requirement, request or recommendation of a Governmental Authority, Company shall deliver a written request for such change(s) to SUPPLIER, and SUPPLIER shall reasonably consider such change(s) in good faith. SUPPLIER shall have final decision-making authority with respect to such proposed change(s); provided that SUPPLIER shall implement any such change(s) required, requested or recommended by a Governmental Authority if such change(s) would not reasonably be expected to adversely affect SUPPLIER or its Affiliates or any Regulatory Authorization held thereby. Company shall be responsible for the incremental costs of any additional resources required to implement any such change(s) requested by Company.

5.4 Quality Agreement.

SUPPLIER and Company have entered into that certain Quality Agreement, dated as of December 19, 2019, relating to the Clinical Products supplied hereunder (the "**Quality Agreement**"). SUPPLIER, either by itself or through its Affiliates, shall perform such quality control or analytical tests on Clinical Products and provide to Company certifications or other documents, in each case, as may be provided for in the Quality Agreement, and shall maintain such records as are reasonably necessary to demonstrate compliance with GMP in the Manufacture of Clinical Products, as may be provided for in the Quality Agreement.

5.5 Nonconforming Clinical Product.

5.5.1 Inspection of Clinical Products.

(a) Company will inspect Clinical Products supplied under this Agreement promptly upon receipt thereof. Subject to the immediately following sentence, Company shall have [*****] days following the delivery of any order of Clinical Products to notify SUPPLIER that it has rejected all or any part of such order in its reasonable and good faith belief that such order contains Nonconforming Clinical Product, which notice shall be accompanied by a sample of the allegedly Nonconforming Clinical Product. With respect to latent Nonconformities and Nonconformities not discoverable by Company within [*****] days of delivery through the use of reasonable inspection methods and procedures (a "**Latent Nonconformity**"), Company shall give notice to SUPPLIER by the first to occur of [*****] months after delivery thereof or within [*****] days following detection of any such Latent Nonconformity.

(b) If Company gives timely notice of allegedly Nonconforming Clinical Products in accordance with Section 5.5.1(a), such Clinical Products shall be conclusively deemed to be Nonconforming Clinical Products, unless SUPPLIER delivers a written notice of disagreement (a "**Nonconformity Disagreement Notice**") to Company within fifteen (15) days of receiving notice of the allegedly Nonconforming Clinical Products from Company. If Company fails to give timely notice of allegedly Nonconforming Clinical Products in accordance with Section 5.5.1(a), such Clinical Products shall be conclusively deemed to have been accepted by Company.

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

5.5.2 Nonconformity. The following terms shall apply for Nonconforming Clinical Product that have not been accepted, or deemed accepted, by Company:

(a) Company shall destroy the Nonconforming Clinical Products or return them to SUPPLIER, in accordance with SUPPLIER's written instructions and at SUPPLIER's expense; and

(b) SUPPLIER shall, at Company's request, replace the Nonconforming Clinical Products; and

(c) SUPPLIER shall reduce the Quarterly Fees owed by Company to SUPPLIER (or refund the Quarterly Fees paid by Company to SUPPLIER, as applicable), as if SUPPLIER failed to deliver the quantity of Nonconforming Clinical Products, in accordance with and to the extent required by Section 3.1.3.

(d) Disagreement Regarding Nonconformity. If SUPPLIER does not agree with Company's determination that any Clinical Products are Nonconforming Clinical Products and timely delivers a Nonconformity Disagreement Notice, then the Parties will select an independent Third Party laboratory reasonably acceptable to each Party to evaluate if the allegedly Nonconforming Clinical Products meet such requirements. Absent manifest error or fraud, this evaluation will be binding on the Parties. If the evaluation certifies that the allegedly Nonconforming Clinical Products do not meet the Clinical Product Requirements, SUPPLIER will be responsible for the cost of the evaluation. If the evaluation certifies that the allegedly Nonconforming Clinical Products do meet the requirements of Sections 5.2(a) and (b), then (1) Company shall be responsible for the cost of the evaluation, (2) the Clinical Products shall be deemed accepted, and (3) if SUPPLIER replaced the Nonconforming Clinical Products and if, as a result of such replacement, the total Clinical Products supplied by SUPPLIER exceeded the Manufacturing Capacity (on an annual or monthly basis), Company shall pay SUPPLIER for such Clinical Products.

5.6 Clinical Product Actions.

5.6.1 Notification. SUPPLIER shall notify Company in writing promptly following its determination that any event, incident or circumstance related to safety issues or regulatory concerns has occurred that is reasonably likely to result in the need for a recall or withdrawal of Clinical Products supplied under this Agreement (a "**Clinical Product Action**"), and shall include in such notice (a "**Clinical Product Action Notice**") the reasoning behind such determination and any supporting facts. Such Clinical Product Action Notice shall be given no later than five (5) Business Days after such determination is made; provided that if any Regulatory Authority (a) threatens or initiates any action to remove Clinical Products from use in clinical trials in any country, or (b) requires a Party, or any of its Affiliates or (sub)licensees, to distribute a "Dear Doctor" letter or its equivalent regarding the use of Clinical Products, then, in either case ((a) or (b)), the Clinical Product Action Notice shall be given within one (1) Business Day after SUPPLIER becomes aware of the action, threat or requirement (as applicable).

5.6.2 Expenses. Unless and solely to the extent a Clinical Product Action is necessitated by a Latent Nonconformity (or by the bad faith, willful misconduct or gross negligence of, or the material breach of this Agreement by, SUPPLIER), Company shall be solely responsible for all costs arising out of such Clinical Product Action and shall reimburse SUPPLIER for any out-of-pocket expenses incurred by SUPPLIER in carrying out a Clinical Product Action. If and then solely to the extent a Clinical Product Action is necessitated by Latent Nonconformity (or by the bad faith, willful misconduct or gross negligence of, or the material breach of this Agreement by, SUPPLIER), SUPPLIER shall reimburse Company for any out-of-pocket expenses incurred by Company or its Affiliates in assisting SUPPLIER to carry out a Clinical Product Action.

5.7 Manufacturing Site Audits.

SUPPLIER will permit Company to conduct quality assurance audits and inspections of SUPPLIER's and its Affiliates' records and facilities relating to Manufacture of Clinical Products, during normal business hours, in accordance with the terms of the Quality Agreement. Each Company representative participating in any such audit or inspection shall enter into a confidentiality agreement in a form reasonably acceptable to SUPPLIER and any applicable Affiliate.

5.8 Regulatory Matters.

5.8.1 SUPPLIER's Obligations. SUPPLIER shall, and shall ensure that its Affiliates shall, at their own cost, obtain and maintain throughout the Term any certificates, permits, licenses and approvals issued by any relevant Governmental Authority required for the Manufacture of Clinical Products at the Manufacturing Sites in accordance with this Agreement.

5.8.2 Regulatory Approval Cooperation. SUPPLIER shall provide Company with all supporting data and information relating to the Chemistry, Manufacture and Control (CMC) of Clinical Products at the Manufacturing Sites that is in the possession and control of SUPPLIER and necessary for regulatory submissions by Company, including all records, raw data, reports, authorizations, certificates, methodologies, batch documentation, raw material specifications, standard operating procedures, standard test methods, certificates of analysis, certificates of compliance and other documentation in its possession or under its control relating to the Manufacturing of the Clinical Products.

5.8.3 Regulatory Inspections. SUPPLIER shall permit Company or its representatives to be present at any visit or inspection by any Regulatory Authority to the extent related to Clinical Products, or to any Manufacturing Site or other facility used to Manufacture, to test or to warehouse Clinical Products or specific to the systems or process used for the Manufacture of Clinical Products. SUPPLIER shall notify Company within three (3) Business Days of becoming aware of any planned inspection and within twenty-four (24) hours of any unplanned or ongoing inspection. SUPPLIER will provide Company copies of all regulatory reports of inspection, copies of all regulatory correspondence from Regulatory Authorities and copies of proposed written responses to be provided to Regulatory Authorities for Company's review and comment before submission to any Regulatory Authority. SUPPLIER and Company will also provide daily inspection summary reports specific to Clinical Products or to any Manufacturing Site or other facility used to Manufacture, to test or to warehouse Clinical Products or specific to the systems or process used for the Manufacture of Clinical Products, in each case, in a format acceptable to both Parties each day of such an inspection. If SUPPLIER receives any observations or warning from any Regulatory Authority relating to any Clinical Products or Manufacturing Site or other facility (if it relates to the Manufacture of any Clinical Products) or to the systems or process used for the Manufacture of Clinical Products, SUPPLIER shall within ten (10) Business Days of the date such observations or warning is received by SUPPLIER, remedy or cause the remedy of the issues identified in such notice or warning or, if any such issues cannot reasonably be remedied within such ten (10) Business Day period the Parties will agree on a plan to resolve such issues within a mutually agreed time period. If the Parties cannot agree, the matter will be referred to the Head of Quality of each Party for resolution, by providing written notice to the appropriate contact person specified in the relevant Quality Agreement.

5.8.4 Additional Support. SUPPLIER may from time to time provide additional support in furtherance of the Manufacture and supply of Clinical Products, including support to assist Company in complying with applicable Law or the requirements of any Regulatory Authority (e.g., the performance of analytical testing using certain assays in support of demonstrating Phase 2 and Phase 3 process comparability), subject to the mutual agreement of the Parties with respect to the terms and conditions applicable to the activities described in this sentence.

5.9 Person-In-Plant.

During the Term, SUPPLIER agrees to permit Company's personnel or duly authorized representatives to observe and consult with respect to the Manufacturing of Clinical Products (each such employee or agent a "**Manufacturing Representative**"). Each Manufacturing Representative will serve as the Company's representative at the Manufacturing Sites during Manufacture of Clinical Products. SUPPLIER will allow each Manufacturing Representative reasonable access to (A) all data and information regarding Manufacture of Clinical Products and (B) to be present during the Manufacture of Clinical Products. Each Manufacturing Representative will have access only to those portions of the Manufacturing Sites reasonably related to the Manufacture of Clinical Products as well as reasonable access to office space, data and communication resources on an as-needed basis to enable such Manufacturing Representative to carry out the activities contemplated herein. In no event will any Manufacturing Representative interfere with, and SUPPLIER will remain fully responsible for, the Manufacture of Clinical Products. Each Manufacturing Representative will coordinate closely with SUPPLIER in order to minimize the impact of his/her presence on operations and will comply with all of SUPPLIER'S policies and procedures regarding their presence in the Facilities including any training requirements.

5.10 Records and Information Management.

SUPPLIER shall comply with the records and information management provisions set forth onExhibit F.

Article 6
REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 Mutual Representations and Warranties.

Each of the Parties hereby represents and warrants to the other Party as of the CMA Effective Date that:

6.1.1 Organization. It is a corporation duly organized, validly existing, and in good standing under the Laws of the jurisdiction of its organization, and has all requisite corporate power and authority to execute, deliver, and perform this Agreement.

6.1.2 Binding Agreement. This Agreement is a legal and valid obligation binding upon such Party and enforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, or other Laws of general application affecting the enforcement of creditor rights, judicial principles affecting the availability of specific performance, and general principles of equity (whether enforceability is considered a proceeding at law or equity).

6.1.3 Authorization. The execution, delivery, and performance of this Agreement by such Party have been duly authorized by all necessary corporate action and do not conflict with any agreement, obligation, instrument, or understanding, oral or written, to which it is a party or by which it is bound, nor violate any applicable Law or any order, writ, judgment, injunction, decree, determination, or award of any Governmental Authority presently in effect applicable to such Party.

6.1.4 No Further Approval. It is not aware of any government authorization, consent, approval, license, exemption of or filing or registration with any Governmental Authority under any applicable Law, currently in effect, necessary for the execution and delivery of this Agreement or any other agreement or instrument executed in connection herewith.

6.1.5 No Inconsistent Obligations. It is not under any obligation, contractual or otherwise, to any Person that conflicts with or is inconsistent in any material respect with the terms of this Agreement, or that would impede the diligent and complete fulfillment of its obligations hereunder.

6.2 Capacity.

SUPPLIER hereby represents and warrants to Company that (a) as of the CMA Effective Date, the capacity at the Manufacturing Sites to Manufacture and supply Clinical Products [*****] will be at least equal to the Current Capacity and (b) it will have sufficient capacity to Manufacture and supply all of the Clinical Products included on the initial Forecast Schedule attached hereto as Exhibit A.

6.3 Certain Compliance Matters.

6.3.1 No Violation of Law. Notwithstanding any other provision of this Agreement, neither Party shall be required to undertake any activity or obligation under this Agreement which it has reason to believe may violate any applicable Laws; provided, however, a Party which so believes shall promptly inform the other Party of such belief.

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

6.3.2 Anti-Bribery and Corruption. Neither SUPPLIER nor its Affiliates will make any payment, either directly or indirectly, of money or other assets, including the compensation SUPPLIER derives from this Agreement (collectively, a "**Payment**"), to government or political party officials, officials of International Public Organizations, candidates for public office, or representatives of other businesses or persons acting on behalf of any of the foregoing (collectively, "**Officials**") or other individuals where such Payment would constitute violation of any applicable Law, including the Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78dd-1, et seq., and the United Kingdom Bribery Act. In addition regardless of legality, neither SUPPLIER nor its Affiliates will make any Payment either directly or indirectly to Officials or other individuals if such Payment is for the purpose of improperly influencing decisions or actions to secure a business advantage, including with respect to the subject matter of this Agreement. SUPPLIER shall have necessary procedures in place to prevent bribery and corrupt conduct by itself and each of its Affiliates and subcontractors. All activities will be conducted in compliance with the U.S. False Claims Act and the U.S. Anti-Kickback Statute. SUPPLIER and each of its Affiliates and subcontractors shall conduct its activities hereunder in accordance with the provisions of Exhibit C to this Agreement.

6.4 No Other Representations or Warranties.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN ANY OTHER WRITTEN AGREEMENT EXECUTED BY EACH OF THE PARTIES, THE PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, INCLUDING ANY EXPRESS OR IMPLIED WARRANTY OF QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF NON-INFRINGEMENT.

Article 7
CONFIDENTIALITY AND PUBLICITY

7.1 Confidentiality.

SUPPLIER will, and will cause its Affiliates and its and their Representatives, to keep confidential and not disclose to any Person (i) the terms of this Agreement or (ii) any non-public, confidential or proprietary information of Company or its Affiliates (including information relating to the Business) obtained pursuant to or in connection with this Agreement and to not use any such information other than in furtherance of the performance of its obligations hereunder. The obligations of SUPPLIER under this Section 7.1 shall not apply to information to the extent such information (a) becomes generally available to the public without breach of SUPPLIER'S or its Affiliates' obligations under this Section 7.1 or under the Asset Purchase Agreement or any Related Document or (B) is required to be disclosed by Law or any Order; provided, however, that in the case of the foregoing clause (B), to the extent not prohibited by such Law or Order, SUPPLIER shall notify Company as early in advance of such disclosure as is practicable to allow Company to take appropriate measures (and SUPPLIER shall reasonably cooperate, at the expense of Company, in the taking of such measures) to preserve the confidentiality of such information.

Article 8
TERM AND TERMINATION

8.1 Term.

This Agreement shall become effective as of the CMA Effective Date and, unless earlier terminated pursuant to this Article 8, shall continue in full force and effect until December 31, 2021 (the "**Term**"); provided that the foregoing shall not limit any ongoing obligations of SUPPLIER with respect to Clinical Products ordered prior to the end of the Term, such as the performance of quality assurance activities or ongoing stability tests, as set forth in this Agreement or the Quality Agreement, following the end of the Term. Without limiting the foregoing, if Company requires additional supply of Clinical Products following the Term to complete then-ongoing clinical trials, then upon Company's request, the Parties shall discuss in good faith an extension to the Term in order for SUPPLIER to provide such additional supply, including with respect to any modifications to the terms of this Agreement that would apply to such Clinical Product supply during such extension as may be reasonably requested by either Party. Any such requested modifications shall be commercially reasonable, and any such extension shall be subject to the mutual written agreement of the Parties.

8.2 Termination by Mutual Agreement.

This Agreement may be terminated at any time upon the mutual written agreement of the Parties.

8.3 Termination for Material Breach.

This Agreement may be terminated by either Party if the other Party has committed a material breach and has failed to remedy such breach within thirty (30) Business Days following receipt of a written notice of such breach from the non-breaching Party.

8.4 Termination for Convenience.

This Agreement may be terminated at any time by Company upon providing at least sixty (60) days' prior written notice to SUPPLIER.

8.5 Effects of Termination or Expiration.

Termination or expiration of this Agreement shall not relieve the Parties of any liability or obligation which accrued hereunder prior to the effective date of such termination or expiration. Each Party shall be free, pursuant to Article 9, to seek, without restriction as to the number of times it may seek, damages, costs and remedies that may be available to it under applicable Law or in equity and shall be entitled, following final resolution of a Dispute in accordance with Article 9, to offset the amount of any damages and costs awarded pursuant to a final determination under Article 9 against any amounts due to such other Party under this Agreement. Upon termination or expiration of this Agreement, SUPPLIER shall transfer to Company all right, title and interest in, to and under any Inventory (including Clinical Products) in the possession of SUPPLIER at no cost to Company, and Company will acquire from SUPPLIER good and marketable title to all such Inventory, free and clear of any Liens.

8.6 Survival.

In the event of termination or expiration of this Agreement, in addition to the provisions of this Agreement that continue in effect in accordance with their terms, the following provisions of this Agreement shall survive: Articles 1 (Definitions) (as applicable), 7 (Confidentiality), 9 (Dispute Resolution), 10 (Indemnification) (solely as to activities arising during the Term) and 11 (Miscellaneous); Sections 2.3 (Forecasts), 4.1 (Transition), 5.5 (Nonconforming Clinical Product), 5.6 (Clinical Product Actions), 6.4 (No Other Representations or Warranties), 8.5 (Effects of Termination or Expiration) and 8.6 (Survival); and any other provisions of this Agreement that are necessary to interpret or effectuate the intent of the foregoing provisions.

Article 9
DISPUTE RESOLUTION

9.1 Dispute Resolution, Generally.

The Parties recognize that a dispute may arise relating to this Agreement (a "**Dispute**"). Any Dispute, including Disputes that may involve the parent company, subsidiaries or Affiliates under common control of any Party, shall be resolved in accordance with this Article 9.

9.2 Mediation.

9.2.1 The Parties shall first attempt in good faith to resolve any Dispute by confidential mediation in accordance with the then current *Mediation Procedure* of the International Institute for Conflict Prevention and Resolution ("**CPR Mediation Procedure**") (www.cpradr.org) before initiating arbitration. The CPR Mediation Procedure shall control, except where it conflicts with these provisions, in which case these provisions control. The mediator shall be chosen pursuant to CPR Mediation Procedure. The mediation shall be held in New York, New York.

9.2.2 Either Party may initiate mediation by written notice to the other Party of the existence of a Dispute. The Parties agree to select a mediator within 20 days of the notice and the mediation will begin promptly after the selection. The mediation will continue until the mediator, or either Party, declares in writing, no sooner than after the conclusion of one full day of a substantive mediation conference attended on behalf of each Party by a senior business person with authority to resolve the Dispute, that the Dispute cannot be resolved by mediation. In no event, however, shall mediation continue more than 60 days from the initial notice by a Party to initiate mediation unless the Parties agree in writing to extend that period.

9.2.3 Any period of limitations that would otherwise expire between the initiation of mediation and its conclusion shall be extended until 20 days after the conclusion of the mediation.

9.3 Arbitration.

9.3.1 If the Parties fail to resolve the Dispute in mediation, and a Party desires to pursue resolution of the Dispute, the Dispute shall be submitted by either Party for resolution in arbitration pursuant to the then current CPR *Non-Administered Arbitration Rules* ("**CPR Rules**") (www.cpradr.org), except where they conflict with these provisions, in which case these provisions control. The arbitration will be held in New York, New York. All aspects of the arbitration shall be treated as confidential.

9.3.2 The arbitrators will be chosen form the CPR Panel of Distinguished Neutrals, unless a candidate not on such panel is approved by both Parties. Each arbitrator shall be a lawyer with at least 15 years experience with a law firm or corporate law department of over 25 lawyers or who was a judge of a court of general jurisdiction. To the extent that the Dispute requires special expertise, the Parties will so inform CPR prior to the beginning of the selection process.

9.3.3 The arbitration tribunal shall consist of three arbitrators, of whom each Party shall designate one in accordance with the "screened" appointment procedure provided in CPR Rule 5.4. The chair will be chosen in accordance with CPR Rule 6.4.

9.3.4 If, however, the aggregate award sought by the Parties is less than $5 million and equitable relief is not sought, a single arbitrator shall be chosen in accordance with the CPR Rules.

9.3.5 Candidates for the arbitrator position(s) may be interviewed by representatives of the Parties in advance of their selection provided that all Parties are represented.

9.3.6 The Parties agree to select the arbitrator(s) within 45 days of initiation of the arbitration. The hearing will be concluded within nine (9) months after selection of the arbitrator(s) and the award will be rendered within 60 days of the conclusion of the hearing, or of any post-hearing briefing, which briefing will be completed by both sides within 45 days after the conclusion of the hearing. In the event the Parties cannot agree upon a schedule, then the arbitrator(s) shall set the schedule following the time limits set forth above as closely as practical.

9.3.7 The hearing will be concluded in ten hearing days or less. Multiple hearing days will be scheduled consecutively to the greatest extent possible. A transcript of the testimony adduced at the hearing shall be made and shall be made available to each Party.

9.3.8 The arbitrator(s) shall be guided, but not bound, by the *CPR Protocol on Disclosure of Documents and Presentation of Witnesses in Commercial Arbitration* (www.cpradr.org) ("Protocol"). The Parties will attempt to agree on modes of document disclosure, electronic discovery, witness presentation, etc. within the parameters of the Protocol. If the Parties cannot agree on discovery and presentation issues, the arbitrator(s) shall decide on presentation modes and provide for discovery within the Protocol, understanding that the Parties contemplate reasonable discovery.

9.3.9 The arbitrator(s) shall decide the merits of any Dispute in accordance with the law governing this Agreement, without application of any principle of conflict of laws that would result in reference to a different law. The arbitrator(s) may not apply principles such as "amiable compositeur" or "natural justice and equity."

9.3.10 The arbitrator(s) are expressly empowered to decide dispositive motions in advance of any hearing and shall endeavor to decide such motions as would a United States District Court Judge sitting in the jurisdiction whose substantive law governs.

9.3.11 The arbitrator(s) shall render a written opinion stating the reasons upon which the award is based. The Parties consent to the jurisdiction of the United States District Court for the district in which the arbitration is held for the enforcement of these provisions and the entry of judgment on any award rendered hereunder. Should such court for any reason lack jurisdiction, any court with jurisdiction may act in the same fashion.

9.3.12 Each Party has the right to seek from the appropriate court provisional remedies such as attachment, preliminary injunction, replevin, etc. to avoid irreparable harm, maintain the status quo, or preserve the subject matter of the Dispute. Rule 14 of the CPR Rules does not apply to this Agreement.

9.3.13 EACH PARTY HERETO WAIVES: (1) ITS RIGHT TO TRIAL OF ANY ISSUE BY JURY, (2) WITH THE EXCEPTION OF RELIEF MANDATED BY STATUTE OR RESULTING FROM THE WILLFUL MATERIAL BREACH OF THIS AGREEMENT, ANY CLAIM TO PUNITIVE, EXEMPLARY, MULTIPLIED, INDIRECT, CONSEQUENTIAL OR LOST PROFITS/REVENUES DAMAGES (EXCEPT, IN EACH CASE, TO THE EXTENT AWARDED TO A THIRD PARTY), AND (3) ANY CLAIM FOR ATTORNEY FEES, COSTS AND PREJUDGMENT INTEREST.

Article 10
INDEMNIFICATION

10.1 Incorporation of Asset Purchase Agreement Indemnification Provisions.

This Agreement shall be deemed to be a "Related Document" for the purposes of Article VII of the Asset Purchase Agreement, and Article VII of the Asset Purchase Agreement will govern the indemnification obligations of the Parties with respect to any "Losses", as such term is defined in the Asset Purchase Agreement, arising under this Agreement (including, for the avoidance of doubt, with respect to any "Losses" arising from, relating to or otherwise in connection with any breach of or failure to perform any covenant or agreement of SUPPLIER or Company, as applicable, contained in this Agreement).

Article 11
MISCELLANEOUS

11.1 Notices.

All notices given by one Party to the other Party under this Agreement will follow the procedures and be delivered to the addresses set forth in Section 9.2 of the Asset Purchase Agreement.

11.2 Governing Law.

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

11.3 Assignment.

Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by either of the Parties without the prior written consent of the other Party, and any assignment without such consent shall be null and void, except that either Party may, without the prior written consent of the other Party, assign (a) any or all of its rights and obligations under this Agreement to any of its Affiliates (provided that the assigning Party shall remain responsible for the performance of such assignee Affiliate) or (b) this Agreement in its entirety to a Third Party acquirer of that portion of its business relating to the subject matter of this Agreement. Any successor or assignee of rights and/or obligations permitted hereunder shall, in writing, expressly assume performance of such rights and/or obligations.

11.4 Designation of Affiliates.

Each Party may discharge any obligation and exercise any right hereunder through delegation of its obligations or rights to any of its Affiliates. Each Party hereby guarantees the performance by its Affiliates of such Party's obligations under this Agreement, and shall cause its Affiliates to comply with the provisions of this Agreement in connection with such performance. Any breach by a Party's Affiliate of any of such Party's obligations under this Agreement shall be deemed a breach by such Party, and the other Party may proceed directly against such Party without any obligation to first proceed against such Party's Affiliate.

11.5 Relationship of the Parties.

It is expressly agreed that SUPPLIER, on the one hand, and Company, on the other hand, are independent contractors, and it is further agreed that the Parties fully intend and expect that the relationship between the two Parties shall not constitute a partnership, joint venture or agency. Except as expressly provided herein, neither SUPPLIER nor Company shall have the authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other, without the prior written consent of the other Party to do so. All individuals employed by a Party shall be employees of that Party and not of the other Party and all costs and obligations incurred by reason of such employment shall be for the account and expense of such Party.

11.6 Force Majeure.

Both Parties shall be excused from the performance of their obligations under this Agreement to the extent that such performance is prevented by Force Majeure and the nonperforming Party promptly provides notice of such Force Majeure circumstances to the other Party. Such excuse shall be continued so long as the condition constituting Force Majeure continues and the nonperforming Party takes reasonable best efforts to remove the condition. Notwithstanding the foregoing, a Party shall not be excused from making payments owed hereunder because of a Force Majeure affecting such Party. If a Force Majeure persists for more than ninety (90) days, then the Parties shall discuss in good faith the modification of the Parties' obligations under this Agreement in order to mitigate the delays caused by such Force Majeure. In the event a Party is prevented from performing its obligations under this Agreement due to Force Majeure for more than six (6) months according to this Section 11.6, the other Party shall have the right to terminate this Agreement upon sixty (60) days' notice after the expiration of such period. A termination under this Section 11.6 by either Party shall be treated as a termination under Section 8.2.

11.7 Severability.

If any one or more of the provisions of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction from which no appeal can be or is taken, the provision shall be considered severed from this Agreement and shall not serve to invalidate any remaining provisions hereof. The Parties shall make good faith efforts to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering this Agreement may be realized.

11.8 English Language.

This Agreement shall be written in and executed in, and all other communications under or in connection with this Agreement shall be in, the English language. Any translation into any other language shall not be an official version hereof or thereof, and in the event of any conflict in interpretation between the English version and such translation, the English version shall control.

11.9 Waiver and Non-Exclusion of Remedies

Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. The waiver by either Party of any right hereunder or of the failure to perform or of a breach by the other Party shall not be deemed a waiver of any other right hereunder or of any other breach or failure by such other Party whether of a similar nature or otherwise. The rights and remedies provided herein are cumulative and do not exclude any other right or remedy provided by applicable Law or otherwise available except as expressly set forth herein.

11.10 Further Assurance.

Each Party shall duly execute and deliver, or cause to be duly executed and delivered, such further instruments and do and cause to be done such further acts and things, including the filing of such assignments, agreements, documents, and instruments, as may be necessary or as the other Party may reasonably request in connection with this Agreement to carry out more effectively the provisions and purposes hereof.

11.11 Headings.

The headings of each Article and Section in this Agreement have been inserted for convenience of reference only and are not intended to limit or expand on the meaning of the language contained in the particular Article or Section.

11.12 Construction.

Whenever this Agreement refers to a number of days without using a term otherwise defined herein, such number refers to calendar days, whether or not "calendar days" is expressly stated. Except where the context otherwise requires, (a) wherever used, the singular shall include the plural, the plural shall include the singular; (b) the use of any gender shall be applicable to all genders; (c) the terms "including," "include," "includes" and "for example" shall not limit the generality of any description preceding such term and, as used herein, shall have the same meaning as "including, but not limited to," and "including, without limitation"; (d) the words "herein", "hereof" and "hereunder", and words of similar import, refer to this Agreement in its entirety and not to any particular provision hereof; (e) the word "will" means "shall"; (f) if a period of time is specified and dates from a given day or Business Day, or the day or Business Day of an act or event, it is to be calculated exclusive of that day or Business Day; (g) "Dollar", "USD" or "$" means U.S. Dollars; (h) references to a particular Person include such Person's successors and assigns to the extent not prohibited by this Agreement; (i) a capitalized term not defined herein but reflecting a different part of speech than a capitalized term which is defined herein shall be interpreted in a correlative manner; (j) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein); (k) any provision under this Agreement requiring the mutual agreement of the Parties or the consent or approval of a Party shall only be satisfied if made in writing signed by the relevant Party(ies) and (l) if this Agreement is terminated in accordance with its terms, the "Term" shall be deemed to end on the effective date of such termination. The language of this Agreement shall be deemed to be the language mutually chosen by the Parties and no rule of strict construction shall be applied against either Party. Each Party represents that it has been represented by legal counsel in connection with this Agreement and acknowledges that it has participated in the drafting hereof.

11.13 Counterparts.

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by .pdf or other electronically transmitted signatures and such signatures shall be deemed to bind each Party as if they were the original signatures.

11.14 Entire Agreement; Amendments.

This Agreement, including the Exhibits hereto, sets forth the complete, final and exclusive agreement and all the covenants, promises, agreements, warranties, representations, conditions and understandings between the Parties with respect to the subject matter hereof and supersedes, as of the CMA Effective Date, all prior and contemporaneous agreements and understandings between the Parties with respect to the subject matter hereof. In the event of any inconsistency between the body of this Agreement or any Exhibits to this Agreement and the Asset Purchase Agreement or any other Related Document, this Agreement shall govern and control with respect to the supply of Clinical Product and the specific subject matter hereof, and the Asset Purchase Agreement and other Related Documents shall govern and control with respect to all other matters. There are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties with respect to the subject matter hereof other than as are set forth herein and therein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by an authorized officer of each Party. In the event of any inconsistency between the body of this Agreement and any Exhibits to this Agreement, unless otherwise expressly stated to the contrary in such Exhibit, the terms contained in this Agreement shall govern and control.

11.15 Specific Performance.

The Parties agree that irreparable damage would occur and that the Parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity and as further set forth in Article 9. For the avoidance of doubt, this Section 11.15 shall not restrict any Party from asserting that the terms and provisions of this Agreement have not been breached (or would not be breached) by the actions or omissions (or intended actions or omissions) of such Party.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have signed this Clinical Manufacturing Agreement as of the date first set forth above.

JANSSEN BIOTECH, INC.

By:	/s/ Darren Snellgrove
Name:	Darren Snellgrove
Title:	Chief Financial Officer Janssen R&D

XBIOTECH USA, INC.

By:	/s/ John Simard
Name:	John Simard
Title:	President & CEO

EXHIBIT 2.4(b)(vi)

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

TRANSITION SERVICES AGREEMENT

BY AND BETWEEN

JANSSEN RESEARCH & DEVELOPMENT, LLC

AND

XBIOTECH USA, INC.

DATED AS OF DECEMBER 30, 2019

EXHIBITS

This TRANSITION SERVICES AGREEMENT (this "Agreement"), dated as of December 30, 2019, is by and between Janssen Research & Development, LLC, a New Jersey limited liability company ("JRD"), and XBiotech USA, Inc., a Delaware corporation ("Service Provider"). JRD and Service Provider are sometimes individually referred to herein as a "Party" and are sometimes collectively referred to herein as the "Parties".

R E C I T A L S:

WHEREAS, on December 7, 2019, Janssen Biotech, Inc., a Pennsylvania corporation ("Buyer"), and XBiotech Inc., a corporation existing under the laws of the Province of British Columbia ("Seller"), entered into that certain Asset Purchase Agreement (the "Purchase Agreement"), pursuant to which, among other things, Seller agreed to sell, and Buyer agreed to purchase, all of Seller's and its Affiliates' right, title and interest in, to and under the Purchased Assets, upon the terms and subject to the conditions set forth therein; and

WHEREAS, following the Closing, Service Provider desires to provide or make available certain Services (as defined below) to JRD and its Affiliates.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained in this Agreement and the Purchase Agreement, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. Capitalized terms used and not defined in this Agreement have the meanings assigned to them in the Purchase Agreement. In addition, for the purpose of this Agreement, the following terms shall have the meanings set forth below.

"Force Majeure Event" means any event beyond the reasonable control of the affected Party, which may include embargoes; war or acts of war, including terrorism; insurrections, riots, or civil unrest; strikes, lockouts or other labor disturbances; epidemics, fire, floods, earthquakes or other acts of nature; acts, omissions or delays in acting by any Governmental Authority (other than delays incident to the ordinary course of drug development); and failure of plant or machinery.

"Service Period" means, with respect to any Service, the period commencing on the Closing Date and ending at the close of business on the earlier of (i) the date on which such Service is terminated in accordance with Section 5.2 and (ii) the date on which all of the Specified Clinical Trials shall have been completed (including any Services which, by their nature, are completed following any Specified Clinical Trials).

"Specified Clinical Trials" means the (i) Phase 2(b) clinical trials for the Compound with respect to the treatment of atopic dermatitis and hidradenitis suppurativa and (ii) the investigator-initiated studies for the Compound with respect to the treatment of systemic sclerosis and pancreatic cancer, in each of cases (i) and (ii), that are ongoing as of the date hereof.

Section 1.2. Glossary of Defined Terms. The following terms have the meanings set forth in the Sections set forth below:

Definition	**Section**
"Agreement"	Preamble
"Buyer"	Recitals
"Buyer Manager"	3.3(b)
"CPR Mediation Procedure"	7.2(a)
"CPR Rules"	7.3(a)
"Dispute"	7.1
"Fees"	4.1
"JRD"	Preamble
"Party" or "Parties"	Preamble
"Pass-Through Costs"	4.1
"Protocol"	7.3(h)
"Purchase Agreement"	Recitals
"Seller"	Recitals
"Seller Manager"	3.3(a)
"Service Provider"	Preamble
"Services"	2.1
"Term"	5.1

ARTICLE II

SERVICES

Section 2.1. Services. Commencing on the Closing Date and for the remainder of the applicable Service Period, Service Provider shall provide, or shall cause one or more of its Affiliates to provide, to JRD and its Affiliates, the services described on Exhibit A (the "Services"). If, during the Term, JRD identifies any service that is not a Service, which was provided by Service Provider or any of its Affiliates to the Business during the Reference Period and which JRD determines in good faith it needs to continue to operate the Business, then JRD may request that Service Provider provide such service, and Service Provider and JRD shall negotiate in good faith to determine whether Service Provider will provide such service. Upon mutual agreement of the Parties, such service will be added to Exhibit A, and will thereafter be considered a "Service" hereunder.

Section 2.2. Performance of Services.

(a) Service Provider shall perform, or caused to be performed, all Services in a manner that is substantially similar in nature, frequency and quality to the analogous services provided during the Reference Period by Service Provider and its Affiliates to the Business. Service Provider shall perform its duties and responsibilities hereunder in good faith and in compliance with applicable Law and, in the provision of the Services, shall comply with all applicable clinical trial agreements with respect to the Specified Clinical Trials and shall not deviate from any of the clinical trial protocols applicable to the Specified Clinical Trials or make any material changes to, or material determinations with respect to, the conduct of the Specified Clinical Trials (including with respect to study design, budget or headcount), in each case without the consent of JRD.

(b) Each of Service Provider and JRD agrees to cooperate and use commercially reasonable efforts to obtain any necessary third-party consents required for the provision of any Services hereunder. If, with respect to a Service, Service Provider and JRD, despite the use of their respective commercially reasonable efforts, are unable to obtain a required consent or the performance of such Service by Service Provider or its Affiliates would constitute a violation of applicable Laws, Service Provider shall in good faith use its commercially reasonable efforts to devise an alternative arrangement for the provision of such Services (which may include, subject to JRD's consent, retaining any Contract that would have otherwise been assigned or transferred to Buyer as an Assumed Contract until the expiration or termination of the applicable Service Period).

(c) Each Party shall be responsible for its own compliance with any and all Laws applicable to its performance under this Agreement. No Party shall take any action in violation of any such applicable Law that results in Liability being imposed on the other Party.

(d) JRD agrees to cooperate in good faith with Service Provider to facilitate the performance of the Services by Service Provider. In furtherance of the foregoing, JRD agrees that Service Provider shall not be deemed to be in breach of its obligations hereunder to the extent a failure to perform such obligations is caused by any failure or delay of JRD or its Affiliates to satisfy its obligations under this Agreement. Neither Service Provider nor any of its Affiliates shall be liable for any action or inaction to the extent taken or omitted to be taken by it pursuant to the instructions received from JRD or its Affiliates.

Section 2.3. Use of Services. Service Provider shall be required to provide the Services only to JRD and its Affiliates and only in connection with the conduct by JRD and its Affiliates of the Business.

Section 2.4. Transitional Nature of Services. Each of Service Provider and JRD acknowledges the transitional nature of the Services, and Service Provider agrees to cooperate in good faith with JRD and to use commercially reasonable efforts to effectuate a smooth transition of the Services from Service Provider to JRD (or its designee).

Section 2.5. Use of Third Parties to Provide Services. Service Provider may perform its obligations to provide a Service through agents, subcontractors, independent contractors or other Third Parties; provided, however, that (a) the delegation of performance of the applicable Service does not impact the nature, frequency or quality of such Service and (b) any increased costs resulting from such delegation shall be borne by Service Provider. Nothing in this Section 2.5 shall relieve Service Provider of its obligations under this Agreement by use of such agents, subcontractors or independent contractors and a breach of this Agreement by any such agents, subcontractors, independent contractors or other Third Parties shall be deemed to constitute a breach of this Agreement by Service Provider.

ARTICLE III

OTHER ARRANGEMENTS

Section 3.1. Access. If, in the course of its performance of the Services hereunder, any of Service Provider or its Affiliates or any of their respective Representatives is granted by JRD or any of its Affiliates access to JRD's or its Affiliates' locations, systems and information, Service Provider agrees to comply, and cause its Affiliates to comply, in all material respects with JRD's or its Affiliates' reasonable policies and to permit its personnel to be appropriately supervised or accompanied during such access as reasonably required by JRD.

Section 3.2. Seller Manager and Buyer Manager.

(a) During the Term, Service Provider shall designate one employee, who initially shall be the individual identified onExhibit B, as the individual who shall have overall responsibility for managing and coordinating, as applicable, the provision of the Services (the "Seller Manager") and who shall coordinate and consult with the Buyer Manager with regard to the Services. Service Provider may, from time to time at its reasonable discretion and upon written notice to JRD, designate other individuals to serve in the capacity of the Seller Manager.

(b) During the Term, JRD shall designate one employee, who initially shall be the individual identified onExhibit B, as the individual who shall have overall responsibility for managing and coordinating, as applicable, the receipt of the Services (the "Buyer Manager") and who shall coordinate and consult with the Seller Manager with regard to the Services. JRD may, from time to time at its reasonable discretion and upon written notice to Service Provider, designate other individuals to serve in the capacity of the Buyer Manager.

(c) The Seller Manager and the Buyer Manager shall serve as the respective primary points of contact for Service Provider, JRD and each of their respective Affiliates with respect to the subject matter of this Agreement.

ARTICLE IV

FEES; TAXES; BOOKS AND RECORDS

Section 4.1. Fees for Services. In consideration for all of the Services to be provided hereunder, for each calendar quarter during the Term, JRD shall pay Service Provider a fee for such quarter equal to all Pass-Through Costs (as defined below) incurred by Service Provider during such calendar quarter [*****] (collectively, the "Fees"). For purposes of this Agreement, "Pass-Through Costs" shall mean those reasonable documented amounts and fees paid to [*****] during the applicable Service Periods, together with such [*****] in each case under the [*****] during the applicable Service Periods. For the avoidance of doubt, Pass-Through Costs shall not include any internal costs or expenses of Service Provider or its Affiliates.

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

Section 4.2. Invoices. Invoices with respect to each calendar quarter (or partial calendar quarter), together with reasonably detailed supporting documentation therefor, shall be provided to JRD within [*****] days following the last day of such calendar quarter (or, if earlier, the expiration of the Term). Payment terms will be net [*****] days after JRD's receipt of an undisputed invoice from Service Provider; provided, however, the actual payment to Service Provider from JRD or its designee will not be made until the next scheduled payment run as set forth at www.ap.jnj.com. JRD may contest any invoice or portion thereof if it reasonably believes that the charges reflected therein are inappropriate or questionable. Once the matter is resolved, JRD shall pay the appropriate charges. Service Provider shall continue to perform its obligations under this Agreement during such dispute. If an invoice is disputed in part, Service Provider may issue a new invoice in compliance with this Section 4.2 reflecting solely the undisputed charges, and any such invoice shall be payable within [*****] days after receipt thereof; provided, however, the actual payment to Service Provider from JRD or its designee will not be made until the next scheduled payment run as set forth at www.ap.jnj.com.

Section 4.3. Taxes. JRD shall bear any sales, use, value-added and similar Taxes imposed by any Taxing Authority attributable to the Services provided hereunder. Notwithstanding anything in this Agreement to the contrary, JRD and its Affiliates shall be entitled to deduct and withhold from any amount payable pursuant to this Agreement such amounts as JRD believes in good faith are required to be deducted and withheld with respect to the making of such payment under any provision of federal, state or local (in each case, whether domestic or foreign) Tax Law. To the extent that amounts are deducted and withheld and paid over to the appropriate Taxing Authority, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

Section 4.4. No Set-Off. Except as mutually agreed to in writing by Service Provider and JRD, no Party or any of its Affiliates shall have any right of set off or other similar rights with respect to (a) any amounts invoiced or paid pursuant to this Agreement or (b) any other amounts claimed to be owed to the other Party or any of its Affiliates arising out of this Agreement.

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

Section 4.5. Books and Records; Audit Rights. Service Provider and its Affiliates shall keep complete and accurate records relating to the Services provided hereunder and the related Fees. JRD shall have the right, not more frequently than once a year, at its own expense, to have an independent, certified public accountant selected by JRD and reasonably acceptable to Service Provider, review any such records of Service Provider and its Affiliates upon thirty (30) days prior written notice and during regular business hours and under obligation of confidence and subject in all cases to any confidentiality obligations Service Provider and its Affiliates have to Third Parties, for the sole purpose of verifying the Fees related to Services performed by or on behalf of Service Provider and its Affiliates under this Agreement. The report of the independent public accountant shall be shared with Service Provider at least fifteen (15) days prior to distribution of the final report to JRD, such that Service Provider can provide the independent public accountant with justifying remarks for inclusion in the report prior to sharing the conclusions of such independent public audit with JRD. The final audit report will be shared with Service Provider and JRD at the same time and specify whether the Fees paid to Service Provider were consistent with Service Provider's and its Affiliates' Pass-Through Costs incurred in the performance of Services, or, if inconsistent, the amount of any underpayment or overpayment. If the review of such records reveals an inconsistency, then JRD shall promptly pay to Service Provider any underpaid amounts that should have been invoiced to JRD and Service Provider shall promptly pay to JRD any overpaid amounts that should not have been invoiced to JRD. If any such discrepancies are an overpayment of amounts due under this Agreement greater than [*****] percent [*****] of the amounts actually due for any prior [*****] month period, Service Provider shall pay all reasonable costs incurred in conducting such review. Once JRD has conducted a review and audit of Service Provider in respect of any given period, it may not subsequently re-inspect Service Provider's or its Affiliates' records in respect of such period, unless a subsequent audit of a separate reporting period uncovers fraud on the part of Service Provider or its Affiliates that is reasonably expected to have been occurring during the prior audited period.

ARTICLE V

TERM AND TERMINATION

Section 5.1. Term. The term of this Agreement (the "Term") shall commence on the Closing Date and, unless earlier terminated pursuant to Section 5.2, shall terminate upon the earlier to occur of: (a) the termination of all Service Periods; or (b) the mutual written agreement of the Parties to terminate this Agreement in its entirety. JRD may request, subject to Service Provider's consent (not to be unreasonably withheld, conditioned or delayed), to extend the Service Period with respect to any or all of the Services as may be agreed to by the Parties.

[*****] Text omitted for confidential treatment. The redacted information has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

Section 5.2. Termination.

(a) Subject to Section 5.3 and without prejudice to JRD's rights with respect to a Force Majeure Event, JRD may from time to time terminate this Agreement with respect to the entirety of any individual Service or a portion thereof for any reason or no reason, by the giving of written notice to Service Provider of such Service specifying the date such termination shall be effective, which shall in no event be less than thirty (30) days after receipt by Service Provider of such notice.

(b) Service Provider may terminate this Agreement in its entirety or with respect to any individual Service or a portion thereof at any time upon written notice to JRD if JRD has failed to perform any of its material obligations under this Agreement, including making payment of Fees for any Service when due (other than amounts under dispute in accordance with Section 4.2), and such failure shall continue uncured for a period of thirty (30) days after receipt by JRD of a written notice of such failure from Service Provider.

Section 5.3. Effect of Termination. Upon the termination of any Service pursuant to this Agreement, Service Provider shall have no further obligation to provide the terminated Service to JRD, and JRD shall have no obligation to pay any future Fees relating to any such Service; provided, however, that JRD shall remain obligated to Service Provider for the Fees owed and payable in respect of Services provided prior to the effective date of termination for such Service. In connection with the termination of any Service, the provisions of this Agreement not relating solely to such terminated Service shall survive any such termination, and in connection with a termination of this Agreement in its entirety, Article I, Section 4.5, this Article V, Article VII and Article VIII, all confidentiality obligations under this Agreement (including Article VI) and Liability for all due and unpaid Fees, shall survive such termination. The termination of this Agreement shall not relieve the Parties of any liability or obligation which accrued hereunder prior to the effective date of such termination.

ARTICLE VI

CONFIDENTIALITY

Section 6.1. Confidentiality.

Service Provider will, and will cause its Affiliates and its and their Representatives, to keep confidential and not disclose to any Person (i) the terms of this Agreement or (ii) any non-public, confidential or proprietary information of JRD or its Affiliates (including information relating to the Business) obtained pursuant to or in connection with this Agreement and to not use any such information other than in furtherance of the performance of the Services. The obligations of Service Provider under this Section 6.1 shall not apply to information to the extent such information (a) becomes generally available to the public without breach of Service Provider's or its Affiliates' obligations under this Section 6.1 or under the Purchase Agreement or any Related Document or (b) is required to be disclosed by Law or any Order; provided, however, that in the case of the foregoing clause (b), to the extent not prohibited by such Law or Order, Service Provider shall notify JRD as early in advance of such disclosure as is practicable to allow JRD to take appropriate measures (and Service Provider shall reasonably cooperate, at the expense of JRD, in the taking of such measures) to preserve the confidentiality of such information.

ARTICLE VII

DISPUTE RESOLUTION

Section 7.1. Dispute Resolution; Generally. The Parties recognize that a dispute may arise relating to this Agreement (a "Dispute"). Any Dispute, including Disputes that may involve the parent company, subsidiaries or Affiliates under common control of any Party, shall be resolved in accordance with this Article VII; provided that in no event is anything in thisArticle VII intended to limit, or shall be construed to limit, in any manner, the Parties' rights to seek specific performance pursuant to Section 8.3.

Section 7.2. Mediation.

(a) The Parties shall first attempt in good faith to resolve any Dispute by confidential mediation in accordance with the then current *Mediation Procedure* of the International Institute for Conflict Prevention and Resolution ("CPR Mediation Procedure") (www.cpradr.org) before initiating arbitration. The CPR Mediation Procedure shall control, except where it conflicts with these provisions, in which case these provisions control. The mediator shall be chosen pursuant to CPR Mediation Procedure. The mediation shall be held in New York, New York.

(b) Either Party may initiate mediation by written notice to the other Party of the existence of a Dispute. The Parties agree to select a mediator within twenty (20) days of the notice and the mediation will begin promptly after the selection. The mediation will continue until the mediator, or either Party, declares in writing, no sooner than after the conclusion of one (1) full day of a substantive mediation conference attended on behalf of each Party by a senior business person with authority to resolve the Dispute, that the Dispute cannot be resolved by mediation. In no event, however, shall mediation continue more than sixty (60) days from the initial notice by a Party to initiate mediation unless the Parties agree in writing to extend that period.

(c) Any period of limitations that would otherwise expire between the initiation of mediation and its conclusion shall be extended until twenty (20) days after the conclusion of the mediation.

Section 7.3. Arbitration.

(a) If the Parties fail to resolve the Dispute in mediation, and a Party desires to pursue resolution of the Dispute, the Dispute shall be submitted by either Party for resolution in arbitration pursuant to the then current *CPR Non-Administered Arbitration Rules* ("CPR Rules") (www.cpradr.org), except where they conflict with these provisions, in which case these provisions control. The arbitration will be held in New York, New York. All aspects of the arbitration shall be treated as confidential.

(b) The arbitrators will be chosen form the CPR Panel of Distinguished Neutrals, unless a candidate not on such panel is approved by both Parties. Each arbitrator shall be a lawyer with at least fifteen (15) years' experience with a law firm or corporate law department of over twenty-five (25) lawyers or who was a judge of a court of general jurisdiction. To the extent that the Dispute requires special expertise, the Parties will so inform CPR prior to the beginning of the selection process.

(c) The arbitration tribunal shall consist of three (3) arbitrators, of whom each Party shall designate one in accordance with the "screened" appointment procedure provided in CPR Rule 5.4. The chair will be chosen in accordance with CPR Rule 6.4.

(d) If, however, the aggregate award sought by the Parties is less than $5 million and equitable relief is not sought, a single arbitrator shall be chosen in accordance with the CPR Rules.

(e) Candidates for the arbitrator position(s) may be interviewed by representatives of the Parties in advance of their selection, provided that all Parties are represented.

(f) The Parties agree to select the arbitrator(s) within forty-five (45) days of initiation of the arbitration. The hearing will be concluded within nine (9) months after selection of the arbitrator(s) and the award will be rendered within sixty (60) days of the conclusion of the hearing, or of any post-hearing briefing, which briefing will be completed by both sides within forty-five (45) days after the conclusion of the hearing. In the event the Parties cannot agree upon a schedule, then the arbitrator(s) shall set the schedule following the time limits set forth above as closely as practical.

(g) The hearing will be concluded in ten (10) hearing days or less. Multiple hearing days will be scheduled consecutively to the greatest extent possible. A transcript of the testimony adduced at the hearing shall be made and shall be made available to each Party.

(h) The arbitrator(s) shall be guided, but not bound, by the *CPR Protocol on Disclosure of Documents and Presentation of Witnesses in Commercial Arbitration* (www.cpradr.org) ("Protocol"). The Parties will attempt to agree on modes of document disclosure, electronic discovery, witness presentation, etc. within the parameters of the Protocol. If the Parties cannot agree on discovery and presentation issues, the arbitrator(s) shall decide on presentation modes and provide for discovery within the Protocol, understanding that the Parties contemplate reasonable discovery.

(i) The arbitrator(s) shall decide the merits of any Dispute in accordance with the law governing this Agreement, without application of any principle of conflict of laws that would result in reference to a different law. The arbitrator(s) may not apply principles such as "amiable compositeur" or "natural justice and equity."

(j) The arbitrator(s) are expressly empowered to decide dispositive motions in advance of any hearing and shall endeavor to decide such motions as would a United States District Court Judge sitting in the jurisdiction whose substantive law governs.

(k) The arbitrator(s) shall render a written opinion stating the reasons upon which the award is based. The Parties consent to the jurisdiction of the United States District Court for the district in which the arbitration is held for the enforcement of these provisions and the entry of judgment on any award rendered hereunder. Should such court for any reason lack jurisdiction, any court with jurisdiction may act in the same fashion.

(l) Each Party has the right to seek from the appropriate court provisional remedies such as attachment, preliminary injunction, replevin, etc. to avoid irreparable harm, maintain the status quo, or preserve the subject matter of the Dispute. Rule 14 of the CPR Rules does not apply to this Agreement.

(m) EACH PARTY HERETO WAIVES: (1) ITS RIGHT TO TRIAL OF ANY ISSUE BY JURY, (2) WITH THE EXCEPTION OF RELIEF MANDATED BY STATUTE OR RESULTING FROM THE WILLFUL MATERIAL BREACH OF THIS AGREEMENT, ANY CLAIM TO PUNITIVE, EXEMPLARY, MULTIPLIED, INDIRECT, CONSEQUENTIAL OR LOST PROFITS/REVENUES DAMAGES (EXCEPT, IN EACH CASE, TO THE EXTENT AWARDED TO A THIRD PARTY), AND (3) ANY CLAIM FOR ATTORNEY FEES, COSTS AND PREJUDGMENT INTEREST.

ARTICLE VIII

INDEMNIFICATION; NO WARRANTY; SPECIFIC PERFORMANCE

Section 8.1. Incorporation of Purchase Agreement Indemnification Provisions. This Agreement shall be deemed to be a "Related Document" for the purposes of Article VII of the Purchase Agreement, and Article VII of the Purchase Agreement will govern the indemnification obligations of the Parties with respect to any "Losses", as such term is defined in the Purchase Agreement, arising under this Agreement (including, for the avoidance of doubt, with respect to any "Losses" arising from, relating to or otherwise in connection with any breach of or failure to perform any covenant or agreement of Service Provider or JRD, as applicable, contained in this Agreement).

Section 8.2. NO WARRANTY. JRD HEREBY ACKNOWLEDGES THAT SERVICE PROVIDER AND ITS AFFILIATES DO NOT ORDINARILY PROVIDE TO THIRD PARTIES SERVICES SUCH AS THE SERVICES AS PART OF THEIR RESPECTIVE BUSINESS ACTIVITIES. JRD ACKNOWLEDGES AND AGREES THAT ALL SERVICES ARE PROVIDED ON AN "AS IS" BASIS AND THAT JRD ASSUMES ALL RISK AND LIABILITY ARISING FROM OR RELATING TO ITS USE OF AND RELIANCE UPON THE SERVICES. ACCORDINGLY, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NONE OF SERVICE PROVIDER OR ITS AFFILIATES MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN CONNECTION WITH OR WITH RESPECT TO ANY OF THE SERVICES. SERVICE PROVIDER SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, OR EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF QUALITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE OR THE NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES.

Section 8.3. Specific Performance. The Parties agree that irreparable damage would occur and that the Parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity and as further set forth in Article VII. For the avoidance of doubt, this Section 8.3 shall not restrict any Party from asserting that the terms and provisions of this Agreement have not been breached (or would not be breached) by the actions or omissions (or intended actions or omissions) of such Party.

ARTICLE IX

MISCELLANEOUS

Section 9.1. License to Intellectual Property. JRD shall grant to Service Provider a nonexclusive, worldwide, royalty-free license to use Intellectual Property Rights owned by Service Provider solely for the purpose of, and only to the extent necessary for, providing the Services.

Section 9.2. Notices. All notices given by one Party to the other Party under this Agreement will follow the procedures and be delivered to the addresses set forth in Section 9.2 of the Purchase Agreement.

Section 9.3. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

Section 9.4. Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, without the prior written consent of the other Party, and any assignment without such consent shall be null and void, except that JRD may, without the consent of Service Provider, assign any or all of its rights and obligations under this Agreement to any of its Affiliate (provided that JRD shall remain responsible for the performance of such assignee Affiliate). Any successor or assignee of rights and/or obligations permitted hereunder shall, in writing, expressly assume performance of such rights and/or obligations.

Section 9.5. Relationship of the Parties. It is expressly agreed that Service Provider, on the one hand, and JRD on the other hand, are independent contractors, and it is further agreed that the Parties fully intend and expect that the relationship between the two Parties shall not constitute a partnership, joint venture or agency. Except as expressly provided herein, neither Service Provider nor JRD shall have the authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other, without the prior written consent of the other Party to do so. All individuals employed by a Party shall be employees of that Party and not of the other Party and all costs and obligations incurred by reason of such employment shall be for the account and expense of such Party.

Section 9.6. Force Majeure. The failure by Service Provider to perform any term hereunder when caused by or resulting from a Force Majeure Event shall not constitute a default or breach under any term of this Agreement; provided, however, that Service Provider shall use its commercially reasonable efforts to continue to perform its obligations under this Agreement and to minimize the adverse effects arising from any Force Majeure Event. If any such excused delay occurs, the Service Period shall be extended for a period equal to the time lost by reason of the delay unless this Agreement has previously been terminated under Article V or under this Section 9.6. Service Provider shall, as soon as reasonably practicable after the occurrence of any such event, (a) provide written notice to JRD of the nature and extent of any such Force Majeure Event; and (b) use its commercially reasonable efforts to remove any such causes and resume performance under this Agreement as soon as reasonably practicable unless this Agreement has previously been terminated under Article V or under this Section 9.6. During the period of a Force Majeure Event, (i) no Fees shall be assessed or otherwise accrue for the duration of such Force Majeure Event to the extent such Fees relate to Services Service Provider is unable to provide as a result of such Force Majeure Event and (ii) JRD shall be entitled to permanently terminate such Service(s) if a Force Majeure Event shall continue to exist for more than thirty (30) consecutive days by delivering written notice of such termination to Service Provider, it being understood that such termination may be effective immediately upon delivery of such written notice.

Section 9.7. Severability. If any one or more of the provisions of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction from which no appeal can be or is taken, the provision shall be considered severed from this Agreement and shall not serve to invalidate any remaining provisions hereof. The Parties shall make good faith efforts to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering this Agreement may be realized.

Section 9.8. Waiver and Non-Exclusion of Remedies. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. The waiver by either Party of any right hereunder or of the failure to perform or of a breach by the other Party shall not be deemed a waiver of any other right hereunder or of any other breach or failure by such other Party whether of a similar nature or otherwise. The rights and remedies provided herein are cumulative and do not exclude any other right or remedy provided by applicable Law or otherwise available except as expressly set forth herein.

Section 9.9. Further Assurances. Each Party shall duly execute and deliver, or cause to be duly executed and delivered, such further instruments and do and cause to be done such further acts and things, including the filing of such assignments, agreements, documents, and instruments, as may be necessary or as the other Party may reasonably request in connection with this Agreement to carry out more effectively the provisions and purposes hereof.

Section 9.10. Headings. The headings of each Article and Section in this Agreement have been inserted for convenience of reference only and are not intended to limit or expand on the meaning of the language contained in the particular Article or Section.

Section 9.11. Construction. Whenever this Agreement refers to a number of days without using a term otherwise defined herein, such number refers to calendar days, whether or not "calendar days" is expressly stated. Except where the context otherwise requires, (a) wherever used, the singular shall include the plural, the plural shall include the singular; (b) the use of any gender shall be applicable to all genders; (c) the terms "including," "include," "includes" and "for example" shall not limit the generality of any description preceding such term and, as used herein, shall have the same meaning as "including, but not limited to," and "including, without limitation"; (d) the words "herein", "hereof" and "hereunder", and words of similar import, refer to this Agreement in its entirety and not to any particular provision hereof; (e) the word "will" means "shall"; (f) if a period of time is specified and dates from a given day or Business Day, or the day or Business Day of an act or event, it is to be calculated exclusive of that day or Business Day; (g) "Dollar", "USD" or "$" means U.S. Dollars; (h) references to a particular Person include such Person's successors and assigns to the extent not prohibited by this Agreement; (i) a capitalized term not defined herein but reflecting a different part of speech than a capitalized term which is defined herein shall be interpreted in a correlative manner; (j) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein); (k) any provision under this Agreement requiring the mutual agreement of the Parties or the consent or approval of a Party shall only be satisfied if made in writing signed by the relevant Party(ies) and (l) if this Agreement is terminated in accordance with its terms, the "Term" shall be deemed to end on the effective date of such termination. The language of this Agreement shall be deemed to be the language mutually chosen by the Parties and no rule of strict construction shall be applied against either Party. Each Party represents that it has been represented by legal counsel in connection with this Agreement and acknowledges that it has participated in the drafting hereof.

Section 9.12. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by .pdf or other electronically transmitted signatures and such signatures shall be deemed to bind each Party as if they were the original signatures.

Section 9.13. Entire Agreement; Amendments. This Agreement, including the Exhibits hereto, sets forth the complete, final and exclusive agreement and all the covenants, promises, agreements, warranties, representations, conditions and understandings between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings between the Parties with respect to the subject matter hereof. In the event of any inconsistency between the body of this Agreement or any Exhibits to this Agreement and the Asset Purchase Agreement or any other Related Document, this Agreement shall govern and control with respect to the provision of Services and the specific subject matter hereof, and the Asset Purchase Agreement and other Related Documents shall govern and control with respect to all other matters. There are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties with respect to the subject matter hereof other than as are set forth herein and therein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by an authorized officer of each Party.

* * * *

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

JANSSEN RESEARCH & DEVELOPMENT, LLC

By: /s/ Darren Snellgrove
Name: Darren Snellgrove
Title: Chief Financial Officer Janssen R&D

XBIOTECH USA, INC.

By: /s/ John Simard
Name: John Simard
Title: President & CEO

EXHIBIT 99.1

XBiotech Closes on Sale of True Human Antibody Bermekimab to Janssen

Validation and Capital from Deal Enables XBiotech to Vigorously Advance anti-IL-1α Antibody Program, Fuel Pipeline

AUSTIN, Texas, Dec. 30, 2019 (GLOBE NEWSWIRE) -- XBiotech Inc. (NASDAQ: XBIT) announced today closing of the sale of the Company's True Human antibody Bermekimab to Janssen Biotech, Inc. (Janssen), a Janssen Pharmaceutical Company of Johnson & Johnson. Upon closing, Janssen paid XBiotech $750 million, with $75 million held in escrow for 18 months. Should Janssen pursue bermekimab indications outside of dermatology, XBiotech could also receive up to $600 million in additional payments upon completion of certain commercialization authorizations. In addition to the bermekimab acquisition, Janssen and XBiotech entered into manufacturing supply and clinical services agreements. Revenue from these agreements are expected to generate positive cash flow for XBiotech over the next two years.

While Janssen acquired all rights to bermekimab, XBiotech remains free to use its True Human Antibody discovery program to develop new antibody therapeutics targeting IL-1α (the same target as bermekimab) and to commercialize these therapeutics for all non-dermatological diseases. XBiotech plans to re-enter clinical development expeditiously with next generation anti-IL-1α therapeutics.

The Company plans to use proceeds from the sale and the services agreements to fund discovery and development of its next generation True Human anti-IL-1α antibody program and to advance other antibody therapeutics in the Company's pipeline, including its infectious disease program. The Company will also have sufficient cash to support a significant capital transaction, such as a stock repurchase, subject to final board review and approval.

John Simard, XBiotech's President & CEO, commented, "We are pleased to have Janssen acquire bermekimab and look forward to seeing superior efficacy and safety of this True Human Antibody in ongoing dermatological clinical trials and beyond. The transaction is an important validation of our True Human platform and the cutting-edge science behind targeting IL-1α and enables us to continue to exploit the vast potential for next generation True Human anti-IL-1α therapeutics outside of dermatology. With the close of the transaction, we are in a stronger position to create extraordinary value for shareholders."

About XBiotech
XBiotech is a fully integrated, global biopharmaceutical company dedicated to pioneering the discovery, development and commercialization of therapeutic antibodies. XBiotech currently is advancing a pipeline of therapies by harnessing naturally occurring antibodies from patients with immunity to certain diseases. Utilizing natural human immunity as a source of new medicines offers the potential to redefine the standards of care for a wide range of diseases. The discovery and manufacturing techniques which enable this were designed by and are exclusive to XBiotech. Headquartered in Austin, Texas, XBiotech also leads the development of innovative, proprietary manufacturing technology to reduce the cost and complexity of biological drug production. For more information, visit www.xbiotech.com.

About True Human™ Therapeutic Antibodies
XBiotech's True Human™ antibodies are the only available antibodies derived without modification from humans who possess natural immunity to certain diseases. (Unlike all commercially available antibodies, which are called "Humanized" or "Fully Human," XBiotech's True Human™ antibodies are directly sourced from the natural human immune response for specific diseases without modification, and thereby have not been shown to cause immunogenicity.) With discovery and clinical programs across multiple disease areas, XBiotech's True Human antibodies have the potential to harness the body's natural immunity to fight disease with unprecedented safety, efficacy, and tolerability.

Cautionary Note on Forward-Looking Statements
This press release contains forward-looking statements, including declarations regarding management's beliefs and expectations, including with respect to XBiotech's strategic ambitions, regarding the expected timing of closing of the transaction with Janssen, filings and approvals relating to the transaction, the amount and timing of potential future milestone payments by Janssen, the mechanism of action and potential safety and efficacy of bermekimab, the anticipated timing of clinical studies with bermekimab, the progression and results of such studies, statements regarding the regulatory pathway for bermekimab and the timing of regulatory filings, and statements regarding any capital allocation decisions, including as to potential share repurchases. In some cases, you can identify forward-looking statements by terminology such as "may," "will," "should," "would," "could," "expects," "plans," "contemplate," "anticipates," "believes," "estimates," "predicts," "projects," "intend" or "continue" or the negative of such terms or other comparable terminology, although not all forward-looking statements contain these identifying words. Forward-looking statements are subject to inherent risks and uncertainties in predicting future results and conditions that could cause the actual results to differ materially from those projected in these forward-looking statements. These risks and uncertainties are subject to the disclosures set forth in the "Risk Factors" section of certain of our SEC filings. Forward-looking statements are not guarantees of future performance, and our actual results of operations, financial condition and liquidity, and the development of the industry in which we operate, may differ materially from the forward-looking statements contained in this press release. Any forward-looking statements that we make in this press release speak only as of the date of this press release. We assume no obligation to update our forward-looking statements whether as a result of new information, future events or otherwise, after the date of this press release.

Contact
Ashley Otero
aotero@xbiotech.com
512-386-2930

Exhibit 99.2

XBiotech Inc.

Consolidated Statement of Operations
(in thousands, except share and per share data)

	Nine Months Ended September 30, 2019		
	As Reported	**Adjustments**	**Pro Forma**
Gross Revenues:			
Bermekimab IP revenue	$ –	$ 674,566	$ 674,566
Clinical trial drug manufacture revenue	–	13,500	13,500
Clinical trial service revenue	–	33,821	33,821
Total gross revenues	–	721,887	721,887
Cost of sales:			
Cost of drug	–	10,255	10,255
Clinical trial cost	–	26,016	26,016
Total Cost of Goods Sold	–	36,271	36,271
Operating expenses:			
Research and development	13,753	(11,050)	2,703
General and administrative	4,169	(353)	3,817
Total operating expenses	17,922	(11,403)	6,520
Gain/Loss from operations	(17,922)	697,019	679,097
Other income (loss):			
Interest income	379	–	379
Other income	10	–	10
Foreign exchange (loss)	(333)	–	(333)
Total other income (loss)	56	–	56
Income Before Tax	(17,866)		679,153
Income tax		30,567	30,567
Net Gain/ loss	$ (17,866)	$ 666,442	$ 648,576
Net Gain/loss per share—basic and diluted	$ (0.47)		$ 16.98
Shares used to compute basic and fully diluted net gain/ loss per share	38,190,584		38,190,584

XBiotech Inc.

Consolidated Statement of Operations
(in thousands, except share and per share data)

	Year Ended December 31, 2018		
	As Reported	**Adjustments**	**Pro Forma**
Revenues:			
Bermekimab IP revenue	$ –	$ 674,566	$ 674,566
Clinical trial drug manufacture revenue	–	18,000	18,000
Clinical trial service revenue	–	45,094	45,094
Total revenues	–	737,660	737,660
Cost of sales			
Cost of drug	–	13,673	13,673
Clinical trial cost	–	34,688	34,688
Total Cost of Sales	–	48,361	48,361
Operating expenses:			
Research and development	15,725	(11,868)	3,857
General and administrative	5,269	(470)	4,799
Total operating expenses	20,994	(12,338)	8,656
Gain/Loss from operations	(20,994)	701,637	680,643
Other income (loss):			
Interest income	400	–	400
Other income	4	–	4
Foreign exchange gain (loss)	(548)	–	(548)
Total other income (loss)	(144)	–	(144)
Net Gain/loss Before Tax	(21,138)	701,637	680,499
Income tax		30,859	30,859
Net Gain/loss After Tax	$ (21,138)	$ 670,778	$ 649,640
Net loss per share—basic and diluted	$ (0.59)		$ 18.14
Shares used to compute basic and fully diluted net gain/loss per share	35,804,304		35,804,304

XBiotech Inc.

Consolidated Balance Sheet
(in thousands, except share data)

	As of September 30,2019		
	As Reported	**Adjustment**	**Pro Forma**
Assets			
Current assets:			
Cash and cash equivalents	$ 40,338	$ 623,168	$ 663,506
Account Receivable	–	45,000	45,000
Prepaid expenses and other current assets	573	–	573
Total current assets	40,911	668,168	709,079
Property and equipment, net	25,732	–	25,732
Total assets	$ 66,643	668,168	$ 734,811
Liabilities and shareholders' equity			
Current liabilities:			
Accounts payable	$ 1,061	$ 2,686	$ 3,747
Accrued expenses	960	(960)	–
Total current liabilities	2,021	1,726	3,747
Long-term liabilities:			
Other liabilities	–		–
Total liabilities	2,021	2,686	4,707
Shareholders' equity:			
Common stock, no par value, unlimited shares authorized, 41,066,467 outstanding at September 30, 2019	320,130	–	320,130
Accumulated other comprehensive income (loss)	58	–	58
Accumulated deficit	(255,566)	666,442	410,876
Total shareholders' equity	64,622	666,442	731,064
Total liabilities and shareholders' equity	$ 66,643	$ 668,168	$ 734,811