

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

**FORM 10-K**

(Mark One)

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

For the fiscal year ended December 31, 2019

OR

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

Commission File Number 001-36687

**XENON PHARMACEUTICALS INC.**

(Exact Name of Registrant as Specified in its Charter)

**Canada**  
(State or other jurisdiction of  
incorporation or organization)  
**200-3650 Gilmore Way**  
**Burnaby, British Columbia**  
(Address of principal executive offices)

**98-0661854**  
(I.R.S. Employer  
Identification No.)

**V5G 4W8**  
(Zip Code)

Registrant's telephone number, including area code: (604) 484-3300

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 Shares, without par value	XENE	The Nasdaq Stock Market LLC (The Nasdaq Global Market)

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

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. YES  NO

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. YES  NO

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

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

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

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

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

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the Registrant, based on the closing price of the common shares on The Nasdaq Global Market on June 28, 2019, was approximately \$227.6 million. Common shares held by each executive officer and director and by each other person who may be deemed to be an affiliate of the Registrant, have been excluded from this computation. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

The number of common shares of the Registrant outstanding as of March 5, 2020 was 34,956,272.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Registrant's Definitive Proxy Statement relating to the 2020 Annual Meeting of Shareholders, which will be filed with the Securities and Exchange Commission subsequent to the date hereof, are incorporated by reference into Part III of this Report. Such Proxy Statement will be filed with the Securities and Exchange Commission not later than 120 days following the end of the Registrant's fiscal year ended December 31, 2019.

XENON PHARMACEUTICALS INC.  
FORM 10-K  
For the Fiscal Year Ended December 31, 2019  
Table of Contents

	<u>Page</u>
<b><u>PART I</u></b>	
Item 1. <a href="#"><u>Business</u></a>	1
Item 1A. <a href="#"><u>Risk Factors</u></a>	23
Item 1B. <a href="#"><u>Unresolved Staff Comments</u></a>	59
Item 2. <a href="#"><u>Properties</u></a>	59
Item 3. <a href="#"><u>Legal Proceedings</u></a>	59
Item 4. <a href="#"><u>Mine Safety Disclosures</u></a>	59
<b><u>PART II</u></b>	60
Item 5. <a href="#"><u>Market for Registrant’s Common Equity, Related Shareholder Matters and Issuer Purchases of Equity Securities</u></a>	60
Item 6. <a href="#"><u>Selected Financial Data</u></a>	60
Item 7. <a href="#"><u>Management’s Discussion and Analysis of Financial Condition and Results of Operations</u></a>	61
Item 7A. <a href="#"><u>Quantitative and Qualitative Disclosure About Market Risk</u></a>	72
Item 8. <a href="#"><u>Financial Statements and Supplementary Data</u></a>	73
Item 9. <a href="#"><u>Changes in and Disagreements With Accountants on Accounting and Financial Disclosure</u></a>	98
Item 9A. <a href="#"><u>Controls and Procedures</u></a>	98
Item 9B. <a href="#"><u>Other Information</u></a>	99
<b><u>PART III</u></b>	100
Item 10. <a href="#"><u>Directors, Executive Officers and Corporate Governance</u></a>	100
Item 11. <a href="#"><u>Executive Compensation</u></a>	100
Item 12. <a href="#"><u>Security Ownership of Certain Beneficial Owners and Management and Related Shareholder Matters</u></a>	100
Item 13. <a href="#"><u>Certain Relationships and Related Transactions, and Director Independence</u></a>	100
Item 14. <a href="#"><u>Principal Accountant Fees and Services</u></a>	100
<b><u>PART IV</u></b>	101
Item 15. <a href="#"><u>Exhibits, Financial Statement Schedules</u></a>	101
Item 16. <a href="#"><u>Form 10-K Summary</u></a>	104
<b><u>Signatures</u></b>	105

**Forward-Looking Statements**

Certain statements contained in this Annual Report on Form 10-K may constitute forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended and Canadian securities laws. The words or phrases “would be,” “will allow,” “intends to,” “may,” “believe,” “plan,” “will likely result,” “are expected to,” “will continue,” “is anticipated,” “estimate,” “project,” or similar expressions, or the negative of such words or phrases, are intended to identify “forward-looking statements.” You should read these statements carefully because they discuss future expectations, contain projections of future results of operations or financial condition, or state other “forward-looking” information. These statements relate to our future plans, objectives, expectations, intentions and financial performance and the assumptions that underlie these statements. These forward-looking statements include, but are not limited to:

- our ability to identify additional products or product candidates either from our internal research efforts or through acquiring or in-licensing other product candidates or technologies;
- the initiation, timing, cost, progress and success of our research and development programs, pre-clinical studies, and clinical trials;
- our ability to advance product candidates into, and successfully complete, clinical trials;
- our ability to recruit sufficient numbers of patients for our current and future clinical trials for orphan or more common indications;
- our ability to achieve profitability;
- our ability to obtain funding for our operations, including research funding;
- our ability to receive milestones, royalties and sublicensing fees under our collaborations, and the timing of such payments;
- the timing and magnitude of potential milestone payments under our product acquisition and in-licensing agreements;
- the implementation of our business model and strategic plans;
- our ability to develop and commercialize product candidates for orphan and niche indications independently;
- our ability to advance XEN007, XEN496, and potentially other future product candidates directly into Phase 2 or later stage clinical trials;
- our commercialization, marketing, and manufacturing capabilities and strategy;
- our ability to identify drug targets;
- our ability to protect our intellectual property and operate our business without infringing upon the intellectual property rights of others;
- our expectations regarding federal, state and foreign regulatory requirements;
- the therapeutic benefits, effectiveness and safety of our product candidates;
- the accuracy of our estimates of the size and characteristics of the markets that may be addressed by our products and product candidates;
- the rate and degree of market acceptance and clinical utility of any future products;
- the timing of, and our and our collaborators’ ability to obtain and maintain regulatory approvals for our product candidates;
- our ability to maintain and establish collaborations;
- our expectations regarding market risk, including interest rate changes and foreign currency fluctuations;
- our belief in the sufficiency of our cash, cash equivalents and marketable securities to meet our needs for at least the next 12 months;
- our ability to engage and retain the employees required to grow our business;
- our future financial performance and projected expenditures;
- developments relating to our competitors and our industry, including the success of competing therapies that are or become available; and
- estimates of our expenses, future revenue, capital requirements and our needs for additional financing.

These forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from those anticipated in the forward-looking statements. Factors that might cause such a difference include, but are not limited to, those discussed in this report in Part I, Item 1A — “Risk Factors,” and elsewhere in this report. Forward-looking statements are based on our management’s beliefs and assumptions and on information currently available to our management. These statements, like all statements in this report, speak only as of their date, and we undertake no obligation to update or revise these statements in light of future developments. In this report, “we,” “our,” “us,” “Xenon,” and “the Company” refer to Xenon Pharmaceuticals Inc. and its subsidiary. Unless otherwise noted, all dollar amounts in this report are expressed in United States dollars.

In addition, statements that “we believe” and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based upon information available to us as of the date of this Annual Report on Form 10-K, and although we believe such information forms a reasonable basis for such statements, such information may be limited or incomplete, and our statements should not be read to indicate that we have conducted a thorough inquiry into, or review of, all potentially available relevant information. These statements are inherently uncertain and investors are cautioned not to unduly rely upon these statements.

This Annual Report on Form 10-K includes our trademarks and registered trademarks, including the Xenon logo and other trademarks or service marks of Xenon. Each other trademark, trade name or service mark appearing in this Annual Report on Form 10-K belongs to its holder.

## **Item 1. Business**

### **Overview**

We are a clinical stage biopharmaceutical company committed to developing innovative therapeutics to improve the lives of patients with neurological disorders. We are advancing a novel product pipeline of neurology-focused therapies to address areas of high unmet medical need, with a focus on epilepsy. In addition to our proprietary product candidates, we also have partnered programs with several pharmaceutical companies, including Neurocrine Biosciences, Inc., or Neurocrine Biosciences, Genentech, a member of the Roche Group, and Flexion Therapeutics, Inc., or Flexion.

### **Our Strategy**

Our goal is to build a self-sustaining, fully-integrated, and profitable company that discovers, develops and commercializes innovative therapeutics to treat neurological disorders.

Our strategy includes:

- Focusing on orphan and niche disease market opportunities that we can independently develop and commercialize;
- Selectively establishing additional partnerships enabling us to access large commercial indications while leveraging the benefits of those collaborations to expand our internal capabilities;
- Further leveraging our discovery platform and insights into disease biology to identify additional product candidates; and
- Identifying external opportunities to expand our pipeline.

A significant focus of our discovery efforts has been on human channelopathies, enabling us to develop strong capabilities in small molecule ion channel drug discovery. Our ion channel discovery capability is founded upon our understanding of the genetics of channelopathies combined with our proprietary biology and medicinal chemistry assets and know-how. While the pharmaceutical industry has shown significant interest in channelopathies, a general inability to target ion channels selectively with a pharmaceutical agent has been a limitation to the development of more effective or safer therapeutics. We believe we have developed a core competence in identifying and developing selective small-molecule ion channel modulators, and we believe we can use this know-how to develop a pipeline of novel ion channel inhibitors for diseases in areas of high unmet medical need. In addition, we have complemented our internal discovery capabilities by identifying external product candidates that target ion channels in the CNS for the treatment of neurological conditions.

### **Our Product Candidates**

#### ***XEN1101, A Kv7 Potassium Channel Modulator for the Treatment of Epilepsy***

We are developing XEN1101, a differentiated Kv7 potassium channel modulator, for the treatment of epilepsy and potentially other neurological disorders. We acquired XEN1101 from 1st Order Pharmaceuticals pursuant to an asset purchase agreement in April 2017. For a more detailed description of the terms of this agreement with 1st Order Pharmaceuticals, see “—Collaborations, Commercial and License Agreements” below.

The Kv7 potassium channel mechanism has been clinically validated with ezogabine, an earlier generation Kv7 modulator that was approved by the U.S. Food and Drug Administration, or FDA, as an adjunctive treatment for adults with focal seizures with or without secondary generalization. XEN1101's unique composition is chemically designed to improve upon potency, selectivity and pharmacokinetics, or PK, of ezogabine, and is not expected to have ezogabine's composition-specific tissue pigmentation effects.

### *Clinical Development*

We announced final data from a XEN1101 Phase 1 clinical trial and the related transcranial magnetic stimulation, or TMS, studies at the American Epilepsy Society, or AES, Annual Meeting in December 2018. The objectives of the XEN1101 Phase 1 clinical trial were to evaluate the safety, tolerability and PK of both single ascending doses, or SAD, and multiple ascending doses, or MAD, of XEN1101 in healthy subjects. The XEN1101 Phase 1 clinical trial also included a pharmacodynamic, or PD, read-out from TMS studies that were designed to assess XEN1101's ability and potency to modulate cortical excitability, thereby demonstrating activity in the target CNS tissue. The XEN1101 Phase 1 results include data from six SAD cohorts ranging in dose from 5 to 30 mg (n=34, placebo=8), including a crossover food effect cohort (n=10) with a single 20 mg dose. MAD results included three cohorts ranging in once daily doses from 15 to 25 mg (n=18, placebo=6) including two cohorts of 15 mg evaluated in a fasted and fed state over 7 and 10 days, respectively, and one cohort of 25 mg evaluated in a fed state over 10 days. The PK profile of XEN1101 (including an effective half-life greater than 24 hours) supports a once-per-day dosing schedule with expected steady state in approximately one week without the need for titration. The majority of adverse events, or AEs, were mild or moderate, resolved spontaneously and were consistent with antiepileptic drugs of this class. Sedation (including somnolence and drowsiness) and dizziness (including light-headedness and presyncope) were the most common AEs, while mild cognitive effects (including memory and speech impairment) and blurred vision were also observed in a dose dependent manner. There were no SAEs, deaths, or clinically significant delayed ventricular repolarization or laboratory findings. Phase 1 results suggest that that XEN1101 is generally safe and well tolerated in the doses examined (single doses of up to 30 mg and multiple doses of up to 25 mg once daily).

The Phase 1b double-blind, placebo-controlled, randomized cross-over TMS study included 20 healthy male subjects. TMS measurements were taken at 2 and 4 hours for all subjects and, due to a prolonged absorption phase displayed by XEN1101, an additional TMS assessment time-point was added at 6 hours for a subset of subjects. Subjects were randomized initially to either a 20 mg dose of XEN1101 or placebo and then, after a one-week wash-out period, crossed over to the other treatment arm. XEN1101 reduced corticospinal excitability, as demonstrated by a concentration dependent elevation in resting motor threshold, or RMT, the key TMS-EMG measure. RMT increased in proportion to XEN1101 plasma concentration showing a mean  $\pm$  standard error of mean increase of  $4.9 \pm 0.7\%$  ( $p < 0.01$ ) at 6 hours. Active motor threshold, or AMT, also increased in proportion to plasma concentration of XEN1101 with an increase of  $2.0 \pm 0.4\%$  at 6 hours. In addition, XEN1101 statistically significantly modulated TMS-evoked EEG potentials, or TEPs, in a pattern consistent with reductions in cortical excitability. Relative to time-matched placebo, at peak plasma levels, XEN1101 decreased the amplitude of TEPs vs placebo at 25, 45 and 180 ms after the TMS pulse. Additional measures of cortical excitability including global mean field power were similarly impacted. XEN1101 also shifted the power spectra of resting state EEGs toward lower frequencies. This Phase 1b TMS study provides evidence of the CNS effects of a 20 mg dose of XEN1101 as indicated by suppression of cortical and corticospinal excitability, and helped with dose selection for our XEN1101 Phase 2b clinical trial.

A Phase 2b clinical trial, called the X-TOLE study, is currently underway and designed as a randomized, double-blind, placebo-controlled, multicenter clinical trial to evaluate the clinical efficacy, safety and tolerability of XEN1101 administered as adjunctive treatment in approximately 300 adult patients with focal epilepsy. The primary endpoint is the median percent change in monthly focal seizure frequency from baseline compared to treatment period of active versus placebo. Patient enrollment for this XEN1101 Phase 2b clinical trial is ongoing in the United States, Canada and Europe. Long term six- and nine-month toxicology studies have now been completed, providing support for the 12-month open label extension for patients enrolled in the Phase 2b clinical trial. The clinical trial protocol includes an option to conduct an interim analysis. Depending upon the rate of enrollment, top-line results are anticipated in the second half of 2020. We also continue to explore the development of XEN1101 in other neurological indications.

### *About Focal Seizures*

A focal seizure is localized within the brain and can either stay localized or spread to the entire brain, which is typically categorized as a secondary generalized seizure. Focal seizures are the most common type of seizure experienced by people with epilepsy. The treatment of an individual patient with focal seizures is currently focused on reduction of seizure frequency, with seizure freedom as the ultimate goal. Focal seizures (simple, complex and secondary generalized tonic-clonic) account for approximately 60% of seizures (GlobalData Report 2017) of which approximately 33% are considered resistant to current treatments (Epilepsy Foundation). It is estimated that the addressable population in the United States could include approximately 460,000 adults and 70,000 pediatric patients with focal epilepsy.

### ***XEN496, A Kv7 Potassium Channel Modulator for the Treatment of KCNQ2-DEE***

We are developing XEN496 (active ingredient ezogabine), a Kv7 potassium channel modulator, for the treatment of KCNQ2 developmental and epileptic encephalopathy, or KCNQ2-DEE (also known as EIEE7). Ezogabine was previously approved by the FDA as an anti-seizure medication, or ASM, as an adjunctive treatment for adults with focal seizures with or without secondary generalization. Published case reports where physicians have used ezogabine in infants and young children with KCNQ2-DEE suggest that XEN496 may be efficacious in this often hard-to-treat pediatric patient population.

The FDA has granted orphan drug designation, or ODD, for XEN496 as a treatment of KCNQ2-DEE. The FDA previously indicated that it is acceptable to study XEN496 in infants and children up to four years old, and that a single, small pivotal trial may be considered adequate in order to demonstrate XEN496's efficacy in KCNQ2-DEE, provided the study shows evidence of a clinically meaningful benefit in patients with the intended indication.

#### ***Clinical Development***

We have developed XEN496 as a pediatric-specific, granule formulation of ezogabine to be presented as single-dose sprinkle capsules. Standard *in vitro* testing has shown that XEN496 acts as an "immediate-release" drug product. In December 2019, we filed an Investigational New Drug, or IND, application with the FDA related to a PK study, testing XEN496 in healthy adult volunteers. In January 2020, we received permission to proceed with the study, which is now ongoing and expected to be completed in the first quarter of 2020. In parallel, we are corresponding with the FDA regarding the Phase 3 clinical trial design and we expect feedback early in the second quarter of 2020. A Phase 3 clinical trial in KCNQ2-DEE is expected to start in 2020.

#### ***About KCNQ2-DEE***

KCNQ2 developmental and epileptic encephalopathy (KCNQ2-DEE), otherwise known as EIEE7, is a rare, severe neurodevelopmental disorder with a significant seizure burden and profound developmental impairment. KCNQ2-DEE is uniquely characterized by multiple, daily, refractory seizures presenting within the first week of life with a prominent tonic component and autonomic signs. Seizures are often accompanied by clonic jerking or complex motor behavior. The electroencephalogram, or EEG, at onset of the disease shows a burst suppression pattern later evolving into multifocal epileptiform activity. The infants usually develop a severe to profound intellectual disability with axial hypotonia that can be accompanied by limb spasticity. The seizure activity typically decreases with age with some patients becoming seizure free or experiencing more minor seizure burden by 3 to 5 years of age; however, a survey of patient caregivers conducted by us indicates that a significant proportion of patients have ongoing seizures beyond this age range. The intellectual disability and other co-morbidities are not reversed or improved with age and patients generally require life-long care. Patients are often non-verbal and some children may also have autistic features. Seizure-related bradycardia and oxygen desaturation with cyanosis have been observed, and are thought to contribute to the significant risk of Sudden Unexpected Death in Epilepsy, or SUDEP, in these children. A recent epidemiology study from Europe examining the incidence and phenotypes of childhood-onset genetic epilepsies reports the incidence of KCNQ2-DEE as approximately 1 per 17,000 live births (5.89/100,000) compared to 1 per 12,200 live births estimated for Dravet Syndrome.

### ***XEN007, A CNS-acting Calcium Channel Modulator***

XEN007 (active ingredient flunarizine) is a CNS-acting calcium channel modulator that modulates Cav2.1 and T-type calcium channels. Other reported mechanisms include dopamine, histamine and serotonin inhibition. Flunarizine is available in certain countries outside of the United States and has been reported to have clinical benefit in treating migraine and other neurological disorders.

Various development strategies for XEN007 are under consideration. We have entered into key exclusive licensing agreements in order to access regulatory files and drug product manufacturing, both of which may enable advanced clinical development of XEN007. The FDA granted ODD for the treatment of hemiplegic migraine with XEN007, and granted ODD and a rare pediatric disease, or RPD, designation for the treatment of alternating hemiplegia of childhood with XEN007. A physician-led, Phase 2 proof-of-concept study is underway to examine the potential clinical efficacy, safety, and tolerability of XEN007 as an adjunctive treatment in pediatric patients diagnosed with treatment-resistant childhood absence epilepsy, or CAE. Absence seizures are characterized by an abrupt impairment of awareness with arrest in behavior, staring, eye lid fluttering, and automatisms associated with generalized 3 Hz spike wave discharges, or SWD, on electroencephalogram, or EEG. A child may have one or many (up to 100) absence seizures a day and have problems with attention and learning. Flunarizine has been shown to be well tolerated clinically, and in pre-clinical models of absence seizures, flunarizine significantly reduced the number and duration of SWDs on EEG as mono-therapy and, when combined with valproic acid or ethosuximide, significantly reduced the SWD EEGs more than any drug alone. Results from the Phase 2 investigator-led proof-of-concept study are expected in 2020. Depending on the results from the study, CAE may represent a potential orphan indication for future development of XEN007.

### ***New Pipeline Opportunities***

Given our expertise in ion channel drug discovery, our efforts are concentrated on the identification of ion channel targets where we believe novel modulators might represent significant therapeutic advances, with a particular focus on CNS-related orphan indications. We intend to expand our pipeline from our internal research efforts and through the acquisition or in-licensing of other product candidates.

### **Our Partnered Programs**

#### ***NBI-921352, A Clinical Stage, Selective Nav1.6 Sodium Channel Inhibitor for the Treatment of Epilepsy***

In December 2019, we entered into a license and collaboration agreement with Neurocrine Biosciences to develop treatments for epilepsy. Neurocrine Biosciences has an exclusive license to XEN901, now known as NBI-921352, a clinical stage selective Nav1.6 sodium channel inhibitor, and an exclusive license to pre-clinical compounds for development, including selective Nav1.6 inhibitors and dual Nav1.2/1.6 inhibitors. The agreement also included a multi-year research collaboration to discover, identify and develop additional novel Nav1.6 and Nav1.2/1.6 inhibitors. For a more detailed description of the terms of this agreement with Neurocrine Biosciences, see “—Collaborations, Commercial and License Agreements” below.

NBI-921352 is a potent, highly selective Nav1.6 sodium channel inhibitor being developed to treat pediatric patients with SCN8A developmental and epileptic encephalopathy, or SCN8A-DEE, and other potential indications, including adult focal epilepsy. Prior to our license and collaboration agreement with Neurocrine Biosciences, we completed a Phase 1 clinical trial in healthy adult subjects, and subsequently developed a pediatric-specific, granule formulation. Neurocrine Biosciences anticipates filing an IND application with the FDA in mid-2020 in order to start a Phase 2 clinical trial in SCN8A-DEE patients in the second half of 2020. We are eligible to receive up to \$25 million upon the FDA acceptance of an IND for NBI-921352, with 55% of the amount in the form of an equity investment in our common shares at a 15% premium to our 30-day trailing volume weighted average price at that time.

#### ***FX301, A Pre-Clinical Nav1.7 Inhibitor for the Treatment of Post-Operative Pain***

In September 2019, we entered into an agreement providing Flexion with the global rights to develop and commercialize XEN402, now known as FX301, a Nav1.7 inhibitor. Flexion’s pre-clinical FX301 program consists of XEN402 formulated for extended release from a thermosensitive hydrogel. The initial development of FX301 is intended to support administration as a peripheral nerve block for control of post-operative pain. Flexion has indicated that it anticipates initiating FX301 clinical trials in 2021. For a more detailed description of the terms of this agreement with Flexion, see “—Collaborations, Commercial and License Agreements” below.

#### ***Selective Inhibitors of Nav1.7 for the Treatment of Pain***

In December 2011, we entered into a collaborative research and license agreement with Genentech to discover and develop selective oral inhibitors of Nav1.7 for the treatment of pain. For a more detailed description of the terms of our agreements with Genentech, see “—Collaborations, Commercial and License Agreements” below. Based on our discovery of Nav1.7 deficiency underlying the rare human disease called congenital indifference to pain, or CIP, where individuals with CIP are unable to feel pain, we believe that Nav1.7 is a highly-validated target for the treatment of pain. Our Genentech collaboration is focused on discovering and developing oral drugs that selectively target Nav1.7.

### **Collaborations, Commercial and License Agreements**

#### ***License and Collaboration Agreement with Neurocrine Biosciences, Inc.***

On December 2, 2019, we entered into a license and collaboration agreement, or the Collaboration Agreement, with Neurocrine Biosciences, Inc., or Neurocrine Biosciences, to establish a collaboration under which the parties will identify, research and develop sodium channel inhibitors, including our clinical candidate XEN901, now known as NBI-921352, and preclinical candidates XEN393, XPC’535 and XPC’391, which compounds Neurocrine Biosciences will have the exclusive right to further develop and commercialize under the terms and conditions set forth in the Collaboration Agreement.

*Licenses.* Under the terms of the Collaboration Agreement we granted to Neurocrine Biosciences an exclusive, royalty-bearing, sublicensable license to certain of our intellectual property rights for the research, development and commercialization of (i) XEN901; (ii) XEN393, XPC'535 and XPC'391, collectively referred to as the development track candidates, or the DTCs; and (iii) certain research compounds that bind to and inhibit voltage-gated sodium channels Nav1.2 and Nav1.6 as their primary mechanism of action, collectively, the Research Compounds and, together with XEN901 and the DTCs, the Compounds, on a worldwide basis for the treatment, cure, diagnosis, prediction or prevention of any human disease or disorder, state, condition and/or malady, subject to certain exceptions set forth in the Collaboration Agreement. We also granted to Neurocrine Biosciences a non-exclusive, non-royalty-bearing, sublicensable license to certain of our intellectual property rights for the screening of compounds for identification as a Select Nav Inhibitor (as defined below) and for the research of certain compounds otherwise expressly excluded from the Collaboration Agreement, or the Excluded Compounds.

*Exclusivity.* During the Research Term (as defined below) and for one year thereafter, other than in accordance with the terms of the Collaboration Agreement, neither Neurocrine Biosciences nor any of its respective affiliates is permitted to directly or indirectly research, develop, manufacture or commercialize any small-molecule Select Nav Inhibitor (as defined below). During the term of the Collaboration Agreement, other than the Excluded Compounds and otherwise in accordance with the terms of the Collaboration Agreement, neither we nor any of our respective affiliates is permitted to directly or indirectly research, develop, manufacture or commercialize a compound that, as its primary mechanism of action, binds to and inhibits voltage-gated sodium channels Nav1.2 and Nav1.6, such compound referred to as a Select Nav Inhibitor.

*Governance.* The parties will establish a joint steering committee, or JSC, composed of an equal number of representatives from each entity, which will coordinate and oversee the Collaboration Programs (as defined below). The JSC will disband upon the completion or earlier termination of both of the Collaboration Programs. Decisions of the JSC will be made by unanimous vote, provided that in the event of a disagreement on any matter, following a specified dispute resolution procedure, Neurocrine Biosciences will have the right to decide such matter, subject to certain exceptions.

*Collaboration Programs.* We are collaborating with Neurocrine Biosciences on the conduct of two collaboration programs: (i) a joint research collaboration to discover, identify and preclinically develop Research Compounds, or the Research Program, and (ii) a collaborative development program for XEN901 and two DTCs selected by the JSC, or the Initial Development Program and, together with the Research Program, referred to as the Collaboration Programs. The Research Program is intended to include the preclinical development of our existing non-clinical Research Compounds and the discovery of new back-up and follow-on Research Compounds to XEN901 and the two DTCs selected by the JSC as clinical development candidates for subsequent development and commercialization by Neurocrine Biosciences. During the term of the Research Program, the parties will conduct related activities in accordance with an agreed research plan and budget. Each party will be solely responsible for all costs such party incurs to conduct its activities under the research plan, provided that Neurocrine Biosciences will reimburse us for certain full-time employees and out-of-pocket expenses incurred by us in accordance with the research budget. Unless earlier terminated or extended, the Research Program will end on the second anniversary of the Collaboration Agreement, or the Research Term, after which we will have no obligation to perform any further activities in furtherance of the Research Program.

The Initial Development Program will include: (i) completion of any preclinical and clinical studies that are ongoing as the date of the Collaboration Agreement of any XEN901 product and the two DTC products selected by the JSC; (ii) a pharmacokinetic, drug-drug interaction and food effect Phase 1 clinical trial of a XEN901 product to examine the adequacy of a new pediatric formulation; and (iii) all preclinical studies of two DTC products containing the two DTCs selected by the JSC. The parties will use their commercially reasonable efforts to conduct the development activities under the Initial Development Program pursuant to specific development plans. Each party will be solely responsible for all costs such party incurs to conduct its activities under these development plans, provided that, with respect to XEN901 development activities, Neurocrine Biosciences will reimburse us for certain full-time employees and out-of-pocket expenses incurred by us, and with respect to certain development activities related to the two JSC-selected DTCs, the JSC may determine that Neurocrine Biosciences shall make such reimbursements.

*Development, Regulatory and Manufacturing.* Except for the activities set forth in the plans for the Collaboration Programs, Neurocrine Biosciences will be solely responsible, at its sole cost and expense, for all development and manufacturing of the Compounds and any pharmaceutical product that contains a Compound, subject to the Co-Funding Option (as defined below). For the first indication that meets or exceeds a specified prevalence threshold, or a Major Indication, for which Neurocrine Biosciences intends to conduct a Phase 3 clinical trial of a XEN901 product or the first clinical trial of a DTC product following a successful Phase 2 clinical trial for such DTC product, Neurocrine Biosciences will prepare a development plan including an estimated budget and provide such plan to us. We will have the right to elect to co-fund the development of one product in a Major Indication under such development plan and to receive a mid-single digit percentage increase in royalties owed on the net sales as calculated pursuant to the terms of the Collaboration Agreement, or Net Sales, of such products in the United States, or the Co-Funding Option. If we exercise the Co-Funding Option, the parties will share equally all reasonable and documented costs and expenses that Neurocrine Biosciences incurs in connection with the development of such product in the applicable indication, except costs and expenses that are solely related to the development of such product for regulatory approval outside the United States.

Neurocrine Biosciences anticipates filing an IND with the FDA in the middle of 2020 in order to start a proposed clinical trial for XEN901 in SCN8A-DEE patients in the second half of 2020.

Neurocrine Biosciences will be the regulatory sponsor and will be solely responsible for all regulatory activities (except for those delegated to us) under the Collaboration Agreement, including submitting one or more INDs for a XEN901 product. If the FDA grants a Rare Pediatric Disease Priority Review Voucher in connection with the approval of a New Drug Application for a XEN901 product, Neurocrine Biosciences may, at its option, (i) sell it to a third party and share a specified portion of the proceeds with us; (ii) use it for a product Neurocrine Biosciences is developing outside the Collaboration Agreement and pay us a specified portion of the voucher's intrinsic value (as calculated pursuant to the terms of the Collaboration Agreement); or (iii) use the voucher for a pharmaceutical product that contains a Compound, in which case no payments would be due to us. If the FDA grants Neurocrine Biosciences a voucher in connection with any other product, Neurocrine Biosciences will retain all rights to such voucher without any payment or other obligations to us.

*Commercialization.* Neurocrine Biosciences will have the exclusive right to conduct, and will be solely responsible for all aspects of, the commercialization of any pharmaceutical product that contains a Compound.

*Financial Terms.* Neurocrine Biosciences has agreed to pay us an upfront payment of \$50.0 million, which includes a \$30.0 million payment in cash within ten business days after the date of the Collaboration Agreement. For the remainder of the upfront payment, concurrently with the entry into the Collaboration Agreement, the parties entered into the Share Purchase Agreement (as defined below) pursuant to which we will issue and sell the Shares (as defined below) to Neurocrine Biosciences for an aggregate purchase price of \$20.0 million.

If a XEN901 product achieves IND acceptance in either SCN8A-EE or a Major Indication, we will be entitled to a milestone cash payment of \$11.25 million or \$4.5 million, respectively. In addition to such cash payment, we will issue and sell either \$13.75 million or \$5.5 million of its common shares to Neurocrine Biosciences, depending on whether the IND acceptance is for SCN8A-EE or a Major Indication, respectively, the Milestone Equity Purchase. The common shares sold to Neurocrine Biosciences in the Milestone Equity Purchase will have a price equal to 115% of our 30-day volume-weighted average price immediately prior to the public announcement of the IND acceptance. If the IND acceptance first occurs for a Major Indication and, within one year after such IND acceptance, there is an IND acceptance in SCN8A-EE, Neurocrine Biosciences will pay us an additional \$6.75 million cash payment and an additional \$8.25 million of common shares will be issued and sold to Neurocrine Biosciences at a price equal to 115% of our 30-day volume-weighted average price immediately prior to the public announcement of the subsequent IND acceptance, or the Subsequent Milestone Equity Purchase. If the aggregate number of common shares to be sold to Neurocrine Biosciences pursuant to the Share Purchase Agreement, the Milestone Equity Purchase and the Subsequent Milestone Equity Purchase would exceed 19.9% of our common shares outstanding on the date of the Collaboration Agreement, then the number of shares to be purchased shall be reduced such that the percentage cap is not exceeded.

The Collaboration Agreement also provides for potential aggregate development and regulatory milestone payments from Neurocrine Biosciences to us of up to \$325.0 million for a XEN901 product and up to \$247.5 million for each other Compound up to a maximum of three other Compounds. Sales-based milestones of up to \$150.0 million for each Compound, including a XEN901 product, will be paid from Neurocrine Biosciences to us upon the achievement of certain Net Sales targets, up to a maximum of four Compounds.

Neurocrine Biosciences has further agreed to pay us royalties based on future Net Sales of any pharmaceutical product that contains a Compound. Such royalty percentages, for Net Sales in and outside the United States, range from (i) for a XEN901 product, a low double-digit percentage to a mid-teen percentage and a high-single digit percentage to low double-digit percentage, respectively; (ii) for each DTC product, a high-single digit percentage to a low double-digit percentage and a mid-single digit percentage to a high-single digit percentage, respectively; and (iii) for each Research Compound product, a mid-single digit percentage to a high-single digit percentage and a tiered mid-single digit percentage, respectively.

Neurocrine Biosciences's obligations to pay royalties with respect to a product and country will expire upon the latest of: (i) the expiration of the last to expire valid claim in (a) the parties' joint patent rights filed during the Research Term or a specified period of time thereafter or (b) our patent rights as specified in the Collaboration Agreement, in each case that cover such product; (ii) ten years from the first commercial sale of the product in such country; and (iii) the expiration of regulatory exclusivity for such product in such country, or the Royalty Term. Royalty payments are subject to reduction in specified circumstances, including expiration of patent rights or if average Net Sales decrease by a certain percentage after the introduction of a generic product.

*Term and Termination.* Unless earlier terminated, the term of the Collaboration Agreement will continue on a product-by-product and country-by-country basis until the expiration of the Royalty Term for such product in such country. Upon the expiration of the Royalty Term for a particular product and country, the exclusive license granted by us to Neurocrine Biosciences with respect to such product and country will become fully-paid, royalty free, perpetual and irrevocable.

Neurocrine Biosciences may terminate the Collaboration Agreement in its entirety or on a product-by-product or country-by-country basis, for any or no reason, by providing at least 90 days' written notice, provided that such unilateral termination will not be effective (i) with respect to a XEN901 product until Neurocrine Biosciences has used its commercially reasonable efforts to complete one Phase 2 clinical trial for a XEN901 product; (ii) with respect to a DTC product until Neurocrine Biosciences has used its commercially reasonable efforts to complete one Phase 1 clinical trial for a DTC product; and (iii) with respect to the Collaboration Agreement in its entirety until Neurocrine Biosciences has used its commercially reasonable efforts to complete both of these clinical trials. Either party may terminate the Collaboration Agreement in the event of a material breach in whole or in part, subject to specified conditions. If Neurocrine Biosciences is entitled to terminate the Collaboration Agreement due to our uncured material breach, in lieu of termination, Neurocrine Biosciences may elect to reduce all subsequent payments owing from Neurocrine Biosciences to us by half.

Upon the termination of the Collaboration Agreement for any reason, all licenses and other rights granted to Neurocrine Biosciences by us shall terminate, provided that if termination is solely with respect to one or more products or countries, then such termination will apply only to the terminated products or countries. Upon termination in certain cases, Neurocrine Biosciences has agreed to grant us licenses to certain Neurocrine Biosciences intellectual property that is reasonably necessary, and that was actually used by Neurocrine Biosciences for the development, manufacturing or commercialization of the terminated products, to research, develop and commercialize the terminated products in the terminated countries. Such license will be royalty-free with respect to any terminated product for which a Phase 2 clinical trial was not completed prior to the effective date of termination, and otherwise will be royalty-bearing ranging from a low-single digit percentage to a high-single digit percentage depending on the stage of development of the applicable product at the effective date of termination.

The Collaboration Agreement includes certain other customary terms and conditions, including mutual representations and warranties, indemnification and confidentiality provisions.

#### ***Share Purchase Agreement***

On December 2, 2019, pursuant to the Collaboration Agreement, we entered into a Share Purchase Agreement with Neurocrine Biosciences, or the Share Purchase Agreement, pursuant to which we issued and sold 1,408,847 of our common shares, or the Shares, to Neurocrine Biosciences in a private placement for an aggregate purchase price of \$20.0 million, or \$14.196 per share. The purchase price represented a 20% premium to the closing price of our common shares on November 29, 2019.

The Shares are subject to lock-up restrictions, which, without prior approval of us, prohibit Neurocrine Biosciences from selling the Shares for a period of up to two years after the effective date of the Collaboration Agreement. In addition, Neurocrine Biosciences is, subject to certain exceptions, subject to a standstill agreement for a period of two years after the effective date of the Collaboration Agreement. Pursuant to the standstill agreement, Neurocrine Biosciences and its affiliates will not (1) acquire, offer to acquire or agree to acquire any of our common shares or securities convertible into common shares, other than common shares issuable to Neurocrine Biosciences pursuant to the terms of the Collaboration Agreement; (2) make, or participate in, any solicitation of proxies to vote any of our or our subsidiaries' voting securities, or propose to change or control our management or board of directors by use of any public communication to holders of securities intended for such purpose; (3) make a public proposal for a change of control; or (4) knowingly encourage, accept, or support a tender, exchange, or offer proposal by any person, which would result in a change of control. The Share Purchase Agreement contains certain other customary terms and conditions, including mutual representations, warranties, and covenants.

#### ***Asset Purchase Agreement with Flexion Therapeutics, Inc.***

On September 9, 2019, we entered into an asset purchase agreement with Flexion Therapeutics, Inc. pursuant to which Flexion acquired all rights with respect to our investigational compound XEN402 and a related compound, including certain regulatory documentation, intellectual property rights, reports, data and all quantities of XEN402 owned or controlled by us. XEN402 is a sodium channel inhibitor that we had previously developed with our collaborator, Teva Pharmaceuticals International GmbH and its affiliated entities. Pursuant to the terms of the agreement, Flexion also assumed certain liabilities relating to the purchased assets, including the obligation to pay a low single-digit percentage royalty to Teva on net sales of any approved products incorporating XEN402.

Flexion paid an upfront purchase price of \$3.0 million for the purchased assets. Pursuant to the terms of the agreement, we are eligible to receive additional payments for various CMC, development and regulatory milestones of up to \$9.0 million through initiation of a Phase 2 proof of concept clinical trial. In addition, following a successful proof of concept clinical trial, we would be eligible to receive additional clinical development and global regulatory approval milestone payments of up to \$40.75 million, commercialization milestone payments of up to \$75.0 million, as well as future royalties on sales of any approved products ranging from mid-single to low-double digit percentages, depending on the level of worldwide net sales.

The agreement contains customary representations, warranties and covenants, including a covenant by us not to develop a competing product for the treatment of post-surgical pain and a covenant by Flexion not to develop a product for the treatment of epilepsy incorporating XEN402. Each party has agreed, subject to certain conditions and limitations, to indemnify the other party for breaches of representations, warranties and covenants and for losses arising from certain assumed/excluded liabilities, as applicable.

#### ***Asset Purchase Agreement with 1st Order Pharmaceuticals, Inc.***

In April 2017, we entered into an asset purchase agreement with 1st Order Pharmaceuticals, Inc., or 1st Order, pursuant to which we acquired all rights with respect to XEN1101 (previously known as 1OP2198). 1st Order previously acquired 1OP2198 from Valeant Pharmaceuticals Luxembourg S.a.r.l., an indirect subsidiary of Bausch Health Companies Inc., together with Valeant Pharmaceuticals Ireland Limited, Bausch Health, and assumed certain obligations, including potential milestone and royalty payments. Under the terms of the asset purchase agreement, we paid 1st Order an upfront fee of approximately \$0.4 million and a \$0.7 million milestone in 2017 upon achieving a clinical development milestone.

In September 2018, we signed an agreement with Bausch Health to buy out all future milestone payments and royalties owed to Bausch Health with respect to XEN1101, including up to \$39.6 million in potential clinical development, regulatory and sales-based milestones and a mid-to-high single digit percentage royalty on commercial sales in exchange for a one-time payment of \$6.0 million. We remain responsible for future potential payments to 1st Order of \$0.5 million in clinical development milestones, up to \$6.0 million in regulatory milestones for multiple indications and \$1.5 million in other milestones, which may be payable pre-commercially. There are no royalty obligations to 1st Order.

#### ***Agreements with Genentech for Selective Inhibitors of Nav1.7 and Pain Genetics***

In December 2011, we entered into a collaborative research and license agreement with Genentech, a member of the Roche Group, to discover and develop small and large molecules that selectively inhibit the Nav1.7 sodium channel and companion diagnostics for the potential treatment of pain. Pursuant to this agreement, we granted Genentech a worldwide exclusive license to develop and commercialize compounds directed to Nav1.7 and products incorporating such compounds for all uses. We also granted Genentech a worldwide non-exclusive license to diagnostic products for the purpose of developing or commercializing such compounds.

Under the terms of the agreement, Genentech paid us an upfront fee of \$10.0 million, a \$5.0 million milestone payment for the selection of a compound for development and an \$8.0 million milestone payment upon the approval by Health Canada of a CTA. Genentech provided funding to us for certain of our full-time equivalents, or FTEs, performing the research collaboration plan, which concluded in December 2016. We are eligible to receive pre-commercial and commercial milestone payments with respect to the licensed products totaling up to an additional \$613.0 million, comprised of up to \$45.5 million in pre-clinical and clinical milestone payments, up to \$387.5 million in regulatory milestone payments, and up to \$180.0 million in sales-based milestone payments for multiple products and indications. In addition, we are eligible to receive royalties based on net sales of the licensed products, which range from a mid-single-digit percentage to ten percent for small-molecule inhibitors for the timeframe that such products are covered by the licensed patents and a low single-digit percentage thereafter until the date that is ten years after first commercial sale on a country-by-country basis, plus a low single-digit percentage for large molecule inhibitors of Nav1.7 for a period of ten years from first commercial sale on a country-by-country basis. Our pre-commercial and commercial milestone payments and royalties may be subject to reductions based on the period in which the compound that is selected for development and commercialization was initially conceived.

Our agreement with Genentech expires on the date of the expiration of all payment obligations to us under the agreement. Genentech may terminate the agreement with three months advance notice anytime on or after the third anniversary of the effective date of the agreement, and each party may terminate the agreement in the event of a material breach by the other party that remains uncured after 90 days. In the event that Genentech terminates the agreement due to our breach, Genentech retains its licenses and its payment obligations to us are reduced. In the event that we terminate the agreement due to Genentech's breach, the rights and licenses granted to Genentech revert back to us, subject to certain rights to make and use certain large-molecule product candidates that are retained by Genentech, and Genentech is obligated to assign certain regulatory approvals and grant certain licenses to us to enable us to develop and commercialize certain terminated products outside of the collaboration.

Our collaborative research and license agreement with Genentech has been amended multiple times, in May 2015, November 2015, March 2016, May 2017, July 2018 and September 2018, to either extend the term of the research program or to provide us with greater flexibility in developing compounds that target Nav1.6. Pursuant to the current amendment, we have obtained a non-exclusive, irrevocable, perpetual, world-wide, sublicensable license under the know-how forming part of the Genentech intellectual property developed under the Nav1.7 collaboration that is necessary or useful to make, use, sell, offer for sale, and import compounds from our Nav1.6 program that are above a certain potency on Nav1.7 and were conceived prior to a certain date and products containing those compounds. Our license from Genentech includes commercialization rights but we are restricted from developing or commercializing our Nav1.6 compounds below a certain potency on Nav1.7 and conceived prior to a certain date in the field of epilepsy and any of our Nav1.6 compounds conceived prior to a certain date, regardless of their potency on Nav1.7, in the field of pain. In exchange for the rights granted to us under this amendment, Genentech is eligible to receive a low single-digit percentage, tiered royalty on net sales of our Nav1.6 compounds conceived prior to a certain date, including XEN901 (now known as NBI-921352), for a period of ten years from first commercial sale on a country-by-country basis. In accordance with our license and collaboration agreement with Neurocrine Biosciences, we remain solely responsible for all payments to Genentech with respect to certain Nav1.6 compounds, including NBI-921352, licensed to Neurocrine Biosciences. Pursuant to the amendment, we granted Genentech a royalty-free, non-exclusive, world-wide license under our Nav1.6 intellectual property to make, use, sell, offer for sale and import compounds below a certain potency on Nav1.7 and products containing those compounds for all uses and indications except epilepsy.

In March 2014, we entered into an additional agreement with Genentech for pain genetics, which focused on identifying genetic targets associated with rare phenotypes where individuals have an inability to perceive pain or where individuals have non-precipitated spontaneous severe pain. Pursuant to the terms of this agreement, any intellectual property arising out of the collaboration will be jointly owned by us and Genentech. We also granted Genentech a time-limited, exclusive right of first negotiation on a target-by-target basis to form joint drug discovery collaborations. Under the terms of this agreement, Genentech paid us an upfront payment of \$1.5 million and two \$0.25 million milestone payments related to the identification of novel pain targets in September 2015 and July 2017. Genentech's time-limited, exclusive right of first negotiation, which was exercisable throughout the research term, expired at the same time as the agreement in March 2018. Despite such termination, we remain eligible for up to an additional \$1.5 million in milestone payments.

#### ***Agreement with Merck & Co., Inc. for Cardiovascular Disease***

In June 2009, we entered into an exclusive collaborative research and option agreement with Merck & Co., Inc., or Merck, pursuant to which the parties conducted a research program to discover and develop novel small-molecule candidates for the potential treatment of cardiovascular disease. Merck provided payments to us for our FTEs who performed our activities pursuant to the research program conducted under the Merck agreement. The Merck collaborative research program ended in December 2012.

Under the terms of the agreement, Merck had the option to obtain an exclusive license under certain intellectual property controlled by us to develop and commercialize compounds and products directed to targets in the research program, which has now expired. In June 2012, Merck exercised its option and paid us \$2.0 million to obtain such a worldwide exclusive license to develop and commercialize compound inhibitors of a target that was identified using our discovery platform. Through December 31, 2018, we have received milestone payments and an option fee totaling \$9.0 million, and we are eligible for further research, development and regulatory milestone payments of up to \$64.0 million, comprised of \$21.0 million in pre-clinical and clinical milestone payments and up to \$43.0 million in regulatory milestone payments for products directed to the licensed target, as well as royalties from the mid to high single-digit range in countries where such products are covered by a valid composition or method of use claim of a Xenon or Merck patent or, if not covered by such claims, royalties in the mid-single-digit range for ten years after first commercial sale of such products.

We have an option to co-fund the Phase 1 and first Phase 2 clinical trials of product candidates licensed by Merck by paying Merck 50% of such development costs. Such co-funding option is available at the IND-filing stage for the applicable product candidate. If we exercise our co-funding option then the maximum eligible milestone amounts due to us increase to \$86.5 million and the royalties increase to the high single-digit to the low double-digit range.

Our agreement with Merck expires on the date of the expiration of all royalty payment obligations to us under the agreement. Merck has the right to terminate the agreement upon providing certain notices to us. Each party may terminate the agreement in the event of a material breach by the other party that remains uncured for 90 days after notice of such breach. In the event that Merck terminates the agreement due to our breach, the licenses granted to Merck survive and becomes fully paid up. In the event that we terminate the agreement due to Merck's breach, the licenses granted to Merck terminate.

### ***Termination Agreement with Teva Pharmaceuticals International GmbH and Teva Canada Limited***

On March 7, 2018, we and Teva Pharmaceuticals International GmbH and Teva Canada Limited, or together Teva, entered into a termination agreement terminating by mutual agreement the collaborative development and license agreement dated December 7, 2012, as amended, which subsequently closed on March 27, 2018. In connection with the termination, Teva returned and we cancelled 1,000,000 of our common shares that were owned by Teva. Pursuant to the terms of the termination agreement, Teva has also returned, licensed or assigned to us certain intellectual property, including certain patent rights and transferred regulatory filings related to TV-45070. The termination agreement requires us to pay a low single digit percentage royalty to Teva based on net sales of approved products, if any, resulting from any continued development and commercialization of TV-45070 by us or a sublicensee during the period that assigned or licensed patents cover such products. Pursuant to the terms of the asset purchase agreement with Flexion, certain future potential obligations relating to the purchased assets were assumed by Flexion, including the obligation to pay a low single-digit percentage royalty to Teva on net sales of any approved products incorporating XEN402. To date, no such sales have occurred.

### **Intellectual Property**

As part of our business strategy, we generally file patent applications disclosing and claiming drug targets and their novel uses, novel compositions that modulate such targets, methods of making and using such compositions and various therapeutic formulations of such compositions that cover our product candidates. In some cases, we also file claims on screening assays as well as compositions and methods for use in diagnosing certain diseases. We generally file applications in the U.S., Canada, the European Union, or EU, and other commercially significant foreign jurisdictions. We also rely on trade secrets, internal know-how, technological innovations and agreements with third parties to develop, maintain and protect our competitive position. Our ability to be competitive will depend on the success of this strategy.

As of December 31, 2019, we owned, co-owned or licensed approximately 26 issued U.S. patents and approximately 23 pending U.S. patent applications, including provisional and non-provisional filings. We also owned, co-owned or licensed approximately 157 additional pending and granted counterpart applications worldwide, including approximately 19 total country-specific validations for three European patents.

As of December 31, 2019, we owned two issued U.S. patents, one pending U.S. non-provisional patent application and four U.S. provisional patent applications related to XEN1101, and methods of making and using XEN1101 and certain related compounds. The issued patents are expected to expire between 2028 and 2029 (absent any extensions of term). In addition, we have approximately 14 foreign issued patents (exclusive of European patent national validations), one pending PCT international application, and approximately five pending corresponding applications in various foreign jurisdictions relating to XEN1101 and certain related compounds.

As of December 31, 2019, we have filed one U.S. provisional patent application directed to XEN496 (i.e., our pediatric formulation of ezogabine), a genus of related formulations, and methods of making and using the same. Any patents issuing from this application are expected to expire in 2040 (absent any adjustments or extensions of term).

As of December 31, 2019, we owned one U.S. patent and one pending U.S. patent application directed to XEN901 and methods of making and using XEN901 and certain related compounds. Any patents issuing from these applications are expected to expire in 2037 (absent any extensions of term). In addition, we have approximately 20 pending corresponding applications in various foreign jurisdictions relating to XEN901 and certain related compounds. Pursuant to our collaboration with Neurocrine Biosciences, Neurocrine Biosciences will oversee the prosecution, maintenance and other matters relating to the patent portfolio for XEN901 (now known as NBI-921352) and the other selective Nav1.6 inhibitors and dual Nav1.2/1.6 inhibitors.

As of December 31, 2019, we have filed four U.S. non-provisional patent applications, three PCT international applications, and approximately 20 pending corresponding applications in various foreign jurisdictions directed to certain of our selective inhibitors of Nav1.6 and/or Nav1.2 (exclusive of XEN901), as well as methods of making and using the same. Any patents issuing from these applications are expected to expire between 2037 and 2039 (absent any adjustments or extensions of term).

As of December 31, 2019, we, together with Genentech, a member of the Roche group, co-owned approximately seven issued U.S. patents, approximately nine pending U.S. patent applications, four foreign issued patents (exclusive of European patent national validations) and have filed approximately 67 pending counterpart patent applications in various jurisdictions directed to Nav1.7 inhibitors, as well as methods of making and using the same. The issued patents, as well as any patents issuing from these applications are expected to expire between 2034 and 2037 (absent any adjustments or extensions of term).

## Competition

The biotechnology and pharmaceutical industries are highly competitive and are characterized by rapidly advancing technologies and a strong emphasis on proprietary products. While we believe that our technology, development experience, scientific knowledge and drug discovery approach provide us with certain advantages, we face potential competition in our discovery and product development efforts from many different approaches and sources, including pharmaceutical and biotechnology companies, academic institutions and governmental agencies and public and private research institutions. Any product candidates or products that we or our collaborators successfully develop and commercialize will compete with existing products and new products that may become available in the future.

Many of the companies against which we are competing or against which we may compete in the future have significantly greater financial resources and expertise in research and development, manufacturing, pre-clinical testing, conducting clinical trials, obtaining regulatory approvals and marketing approved products than we, or our collaborators, do. Mergers and acquisitions in the pharmaceutical and biotechnology industries may result in even more resources being concentrated among a smaller number of our competitors. Smaller or early stage companies may also prove to be significant competitors, particularly through collaboration arrangements with large and established companies.

Our commercial opportunities could be reduced or eliminated if our competitors develop and commercialize products or therapies that are safer, more effective, have fewer or less severe side effects, are more convenient or are less expensive than any products that we may develop. Our competitors also may obtain FDA, European Medicines Agency, or EMA, Health Canada or other regulatory approval for their products more rapidly than we may obtain approval for ours, which could result in our competitors establishing a strong market position before we are able to enter the market. In addition, our ability to compete may be affected in many cases by insurers or other third party payers.

Aside from the product marketplace, our competitors also compete with us in recruiting and retaining qualified scientific and management personnel, establishing clinical trial sites, recruiting patients for clinical trials, and by acquiring technologies complementary to, or necessary for, our programs.

The key competitive factors affecting the success of all of our product candidates, if approved, are likely to be their efficacy, safety, convenience, price, the effectiveness of alternative products, the level of competition and the availability of coverage, and adequate reimbursement from government and other third party payers. Our product candidates that are in clinical development may compete with various therapies and drugs, both in the marketplace and currently under development.

### *Anti-Seizure Medications, or ASMs, for the Treatment of Epilepsy*

If more than one of our proprietary or partnered products were approved for the treatment of epilepsy, we anticipate that they could potentially compete with one another and other ASMs. Commonly used ASMs, among others, include phenytoin, levetiracetam, brivaracetam, cenobamate, carbamazepine, clobazam, lamotrigine, valproate, oxcarbazepine, topiramate, lacosamide, perampanel and cannabidiol. There are currently no FDA-approved treatments specifically indicated for the early infantile epileptic encephalopathies KCNQ2-DEE or SCN8A-DEE; however, a number of different ASMs are currently used in these patient populations. We are not aware of other companies that are developing selective Nav1.6 inhibitors for the treatment of epilepsy. There are other ASMs in development that could potentially compete with our products, including products in development from Eisai Co., Ltd., Insys Therapeutics Inc., Knopp Biosciences LLC, Marinus Pharmaceuticals, Inc., Ovid Therapeutics Inc., Praxis Bioresearch, Sage Therapeutics, SK Life Science, Inc., Sunovion Pharmaceuticals Inc., Supernus Pharmaceuticals Inc., Takeda Pharmaceutical Company Ltd., UCB, Inc., Upsher-Smith Laboratories, Inc., and Zogenix, Inc.

### *Selective Inhibitors of Nav1.7 for the Treatment of Pain*

Drug discovery and development for various pain applications is intensely competitive. There are a large number of approved products for neuropathic pain, inflammatory pain and other pain indications. These approved products include capsaicin, celecoxib, lidocaine, narcotic analgesics, gabapentin, and pregabalin. We are also aware of development programs at several pharmaceutical and biotechnology companies that are developing Nav1.7 inhibitors or other sodium channel inhibitors for the treatment of pain, including Amgen Inc., AstraZeneca PLC, Biogen Inc., Bristol-Myers Squibb Company, Chromocell Corporation in collaboration with its partner Astellas Pharma Inc., Dainippon Sumitomo Co., Ltd., Eli Lilly and Company, H. Lundbeck A/S, Merck, NeuroQuest Inc., Newron Pharmaceuticals SpA, Vertex Pharmaceuticals Inc., Voyager Therapeutics, Inc. Moreover, we are aware of various other product candidates in development that target other mechanisms of action to treat various pain indications, including calcium channel inhibitors, nerve growth factor inhibitors, and Nav1.8 inhibitors.

## Government Regulation

We are developing small-molecule product candidates, which are regulated as drugs by the FDA and equivalent regulatory authorities outside the U.S. Within the FDA, the Center for Drug Evaluation and Research, or CDER, regulates drugs. Drugs are subject to regulation under the Federal Food, Drug, and Cosmetic Act, or FD&C Act, and other federal, provincial, state, local and foreign statutes and regulations. The FD&C Act and corresponding regulations govern, among other things, the testing, manufacturing, safety, efficacy, labeling, packaging, storage, record keeping, distribution, import, export, reporting, advertising and other promotional practices involving drugs. FDA approval of an IND application must be obtained before clinical testing of drugs is initiated, and each clinical study protocol for such product candidates is reviewed by the FDA and IRB prior to initiation in the U.S. FDA approval also must be obtained before marketing of drugs in the U.S. The process of obtaining regulatory approvals and the subsequent compliance with appropriate federal, provincial, state, local and foreign statutes and regulations require the expenditure of substantial time and financial resources and we may not be able to obtain the required regulatory approvals.

### *U.S. Drug Development Process*

The process required by the FDA before a drug product may be marketed in the U.S. generally involves the following:

- completion of nonclinical laboratory tests and animal studies according to good laboratory practices, or GLPs, and applicable requirements for the humane use of laboratory animals or other applicable regulations;
- submission to the FDA of an application for an IND, which must become effective before human clinical studies may begin;
- performance of adequate and well-controlled human clinical studies according to the FDA's regulations commonly referred to as good clinical practices, or GCPs, and any additional requirements for the protection of human research subjects and their health information, to establish the safety and efficacy of the proposed product for its intended use;
- submission to the FDA of an NDA for drug products for marketing approval that includes substantial evidence of safety and efficacy based on large scale phase 3 clinical studies;
- satisfactory completion of an FDA inspection of the manufacturing facility or facilities where the product is produced to assess compliance with good manufacturing practices, or GMP, to assure that the facilities, methods and controls are adequate to consistently manufacture the product pursuant to regulatory requirements;
- potential FDA audit of the nonclinical and clinical study sites that generated the data in support of the NDA; and
- FDA review and approval of the NDA.

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

- *Phase 1.* The drug is initially introduced into healthy human subjects and tested for safety. In the case of some products for severe or life-threatening diseases, especially when the product may be too inherently toxic to ethically administer to healthy volunteers, the initial human testing is often conducted in patients that have the condition or disease being studied.
- *Phase 2.* The drug is evaluated in a limited patient population to identify possible adverse effects and safety risks, to preliminarily evaluate the efficacy of the product for specific targeted diseases and to determine a dose range and dosing schedule.
- *Phase 3.* Clinical studies are undertaken to further evaluate dosing and dosing schedule, clinical efficacy, and safety in an expanded patient population at geographically dispersed clinical study sites. These clinical studies are intended to establish the overall risk/benefit ratio of the product and provide an adequate basis for product labeling.

Post-approval clinical studies, sometimes referred to as Phase 4 clinical studies, may be conducted after initial marketing approval. These clinical studies are used to gain additional experience from the treatment of patients in the intended therapeutic indication, particularly for long-term safety follow-up. During all phases of clinical development, regulatory agencies require extensive monitoring and auditing of all clinical activities, clinical data, and clinical study investigators.

Concurrent with clinical studies, companies usually complete additional animal studies and must also develop additional information about the physical characteristics of the drug as well as finalize a process for manufacturing the product in commercial quantities in accordance with GMP requirements. The manufacturing process must be capable of consistently producing quality batches of the product candidate and, among other requirements, the sponsor must develop methods for ensuring the quality, identity, strength, and purity of the final drug. Additionally, appropriate packaging must be selected and tested and stability studies must be conducted to demonstrate that the drug candidate does not undergo unacceptable deterioration over its labeled shelf life.

### ***U.S. Review and Approval Processes***

After the completion of clinical studies of a drug, FDA approval of an NDA must be obtained before commercial marketing of the drug. The NDA must include results of product development, laboratory and animal studies, human studies, information on the manufacture and composition of the product, proposed labeling and other relevant information. In addition, under the Pediatric Research Equity Act, or PREA, an NDA or supplement to an NDA must contain data to assess the safety and effectiveness of the product for the claimed indications in all relevant pediatric subpopulations and to support dosing and administration for each pediatric subpopulation for which the product is safe and effective. The FDA may grant deferrals for submission of data or full or partial waivers. Unless otherwise required by regulation, PREA does not apply to any drug for an indication for which orphan designation has been granted. The testing and approval processes require substantial time and effort and there can be no assurance that the FDA will accept the NDA for filing and, even if filed, that any approval will be granted on a timely basis, if at all.

Under the Prescription Drug User Fee Act, or PDUFA, as amended, each NDA must be accompanied by a substantial user fee. PDUFA also imposes an annual product fee for drugs and an annual establishment fee on facilities used to manufacture prescription drugs. Fee waivers or reductions are available in certain circumstances, including a waiver of the application fee for the first application filed by a small business. Additionally, no user fees are assessed on NDAs for products designated as orphan drugs, unless the product also includes a non-orphan indication.

Within 60 days following submission of the application, the FDA reviews the NDA to determine if it is substantially complete before the agency accepts it for filing. The FDA may refuse to file any marketing application that it deems incomplete or not properly reviewable at the time of submission and may request additional information, including additional clinical data. In this event, the NDA must be resubmitted with the additional information. The resubmitted application also is subject to review before the FDA accepts it for filing. Once the submission is accepted for filing, the FDA begins an in-depth substantive review of the NDA. The FDA reviews the application to determine, among other things, whether the proposed product is safe and effective for its intended use, and whether the product is being manufactured in accordance with GMPs. The FDA may refer applications for novel products or products that present difficult questions of safety or efficacy to an advisory committee, typically a panel that includes clinicians and other experts, for review, evaluation and a recommendation as to whether the application should be approved and under what conditions. The FDA is not bound by the recommendations of an advisory committee, but it considers such recommendations carefully when making decisions. During the product approval process, the FDA also will determine whether a Risk Evaluation and Mitigation Strategy, or REMS, is necessary to assure the safe use of the product. If the FDA concludes a REMS is needed, the sponsor of the NDA must submit a proposed REMS; the FDA will not approve the application without a REMS, if required.

Notwithstanding the submission of relevant data and information, the FDA may ultimately decide that the NDA does not satisfy its regulatory criteria for approval and deny approval. Data obtained from clinical studies are not always conclusive and the FDA may interpret data differently than we interpret the same data. If the agency decides not to approve the marketing application, the FDA will issue a Complete Response letter that usually describes all of the specific deficiencies in the application identified by the FDA. The deficiencies identified may be minor, for example, requiring labeling changes, or major, for example, requiring additional clinical studies. Additionally, the Complete Response letter may include recommended actions that the applicant might take to place the application in a condition for approval. If a Complete Response letter is issued, the applicant may either resubmit the NDA, addressing all of the deficiencies identified in the letter, or withdraw the application.

If a product receives regulatory approval, the approval will be limited to the specific diseases and dosages studied in clinical trials or the indications for use may otherwise be limited, which could restrict the commercial value of the product. Further, the FDA may require that certain contraindications, warnings or precautions be included in the product labeling. The FDA may impose restrictions and conditions on product distribution, prescribing, or dispensing pursuant to a REMS request, or otherwise limit the scope of any approval.

One of the performance goals agreed to by the FDA under the PDUFA is to complete its review of 90% of standard new molecular entity, or NME, NDAs within ten months from the filing date and 90% of priority NME NDAs within six months from the filing date, whereupon a review decision is to be made. The FDA does not always meet its PDUFA goal dates and its review goals are subject to change from time to time. The review process and the PDUFA goal date may be extended by three months if the FDA requests or the application sponsor otherwise provides additional information or clarification regarding information already provided in the submission within the last three months before the PDUFA goal date.

### ***Fast Track Designation***

The FDA has various programs, including Fast Track, which are intended to expedite the process for the development and review of drugs. Even if a drug qualifies for one or more of these programs, the FDA may later decide that the drug no longer meets the conditions for qualification. Generally, drugs that are eligible for these programs are those for serious or life-threatening conditions, those with the potential to address unmet medical needs, and those that offer meaningful benefits over existing treatments. For example, Fast Track is a process designed to expedite the FDA's review of drugs that treat serious or life-threatening diseases or conditions and fill unmet medical needs. Under the Fast Track process, drugs that offer major advances in treatment or provide a treatment where no adequate therapy exists, may also receive priority review by the FDA, or review within six months of the filing of an NDA compared to a traditional review time of ten months. Although Fast Track and priority review do not affect the standards for approval of a drug, and may not result in a faster approval, if approval is granted, for Fast Track designated drugs, the FDA will also attempt to facilitate early and frequent meetings with a sponsor of a Fast Track designated drug, to expedite such drug's review and development.

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

Under the Orphan Drug Act, the FDA may grant orphan designation to a drug intended to treat a rare disease or condition, which is generally a disease or condition that affects fewer than 200,000 individuals in the U.S., or more than 200,000 individuals in the U.S. and for which there is no reasonable expectation that the cost of developing and making a drug available in the U.S. for this type of disease or condition will be recovered from sales of the product. XEN007 (active ingredient flunarizine), a drug we are evaluating for potential development in HM or AHC, has received orphan drug designation from the FDA for each indication. We have also received orphan drug designation from the FDA for XEN496 (active ingredient ezogabine), a drug we intend to begin Phase 3 development for the treatment of KCNQ2-DEE in 2020. Orphan product designation must be requested before submitting an NDA. After the FDA grants orphan product designation, the identity of the therapeutic agent and its potential orphan use are disclosed publicly by the FDA. Orphan product designation does not convey any advantage in or shorten the duration of the regulatory review and approval process.

Orphan drug products may also be eligible for RPD designation if greater than 50% of patients living with the disease are under age 19 and the condition affects fewer than 200,000 individuals in the U.S. A priority review voucher will be given to the sponsor of a product with an RPD designation at the time of product approval that is transferable to another company. We have received RPD designation from the FDA for XEN007 for the treatment of AHC. There is no assurance we will receive a RPD priority review voucher or that it will result in a faster development process, review or approval for a subsequent marketing application. Further, it is possible that even if we obtain approval for XEN007 and qualify for such a priority review voucher, the program may no longer be in effect at the time of approval. Although priority review vouchers may be sold or transferred to third parties, there is no guaranty that we will be able to realize any value if we were to sell a priority review voucher.

If a product that has orphan designation subsequently receives the first FDA approval for such drug for the disease or condition for which it has such designation, the product is entitled to orphan product exclusivity, which means that the FDA may not approve any other applications to market the same drug for the same indication for seven years, except in limited circumstances, such as a showing of clinical superiority to the product with orphan exclusivity. Competitors, however, may receive approval of different products for the same indication for which the orphan product has exclusivity or obtain approval for the same product but for a different indication for which the orphan product has exclusivity. Orphan product exclusivity also could block the approval of one of our products for seven years if a competitor obtains approval of the same product for the same orphan indication as defined by the FDA, or if our product candidate is determined to be contained within the competitor's product for the same orphan indication or disease. If a drug designated as an orphan product receives marketing approval for an indication broader than what is designated, it may not be entitled to orphan product exclusivity. Orphan drug status in the EU has similar, but not identical, benefits, including up to ten years of exclusivity.

### ***Post-Approval Requirements***

Rigorous and extensive FDA regulation of drug continues after approval, particularly with respect to GMP. We will rely, and expect to continue to rely, on third parties for the production of clinical and commercial quantities of any products that we may commercialize. Manufacturers of our products are required to comply with applicable requirements in the GMP regulations, including quality control and quality assurance and maintenance of records and documentation. Other post-approval requirements applicable to drug manufacturers, include reporting of GMP deviations that may affect the safety, efficacy or quality of a distributed product, record-keeping requirements, reporting of adverse effects, reporting updated safety and efficacy information, and complying with electronic record and signature requirements.

We also must comply with the FDA's advertising and promotion requirements, such as those related to direct-to-consumer advertising, the prohibition on promoting products for uses or in patient populations that are not described in or are otherwise inconsistent with the product's approved labeling (known as "off-label use"), and industry-sponsored scientific and educational activities. Discovery of previously unknown problems or the failure to comply with the applicable regulatory requirements may result in restrictions on the marketing of a product or withdrawal of the product from the market as well as possible civil or criminal sanctions. Failure to comply with the applicable U.S. requirements at any time during the product development process, approval process or after approval, may subject an applicant or manufacturer to administrative or judicial civil or criminal sanctions and adverse publicity. FDA sanctions could include refusal to approve pending applications, withdrawal of an approval, clinical hold, warning or untitled letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, fines, refusals of government contracts, mandated corrective advertising or communications with doctors, debarment, restitution, disgorgement of profits, or civil or criminal penalties. Any agency or judicial enforcement action could have a material adverse effect on us.

Drug manufacturers and other entities involved in the manufacture and distribution of approved drugs are required to register their establishments with the FDA and certain state agencies, and are subject to periodic unannounced inspections by the FDA and certain state agencies for compliance with GMPs and other laws. Accordingly, manufacturers must continue to expend time, money, and effort in the area of production and quality control to maintain GMP compliance. Discovery of problems with a product after approval may result in restrictions on a product, manufacturer, or holder of an approved NDA, including withdrawal of the product from the market. In addition, changes to the manufacturing process or facility generally require prior FDA approval before being implemented and other types of changes to the approved product, such as adding new indications and additional labeling claims, are also subject to further FDA review and approval.

#### ***U.S. Patent Term Restoration and Marketing Exclusivity***

Depending upon the timing, duration and specifics of the FDA approval of the use of our product candidates, some of our U.S. patents may be eligible for limited patent term extension under the Drug Price Competition and Patent Term Restoration Act of 1984, commonly referred to as the Hatch-Waxman Amendments. The Hatch-Waxman Amendments permit a patent restoration term of up to five years as compensation for patent term lost during product development and the FDA regulatory review process. However, patent term restoration cannot extend the remaining term of a patent beyond a total of 14 years from the product's approval date. Only one patent applicable to an approved product is eligible for the extension and the application for the extension must be submitted prior to the expiration of the patent. The U.S. Patent and Trademark Office, in consultation with the FDA, reviews and approves the application for any patent term extension or restoration.

Under the Hatch-Waxman Amendments, a drug product containing a new chemical entity as its active ingredient is entitled to five years of market exclusivity, and a product whose active ingredient was previously FDA approved, and for which the sponsor is required to generate new clinical data is entitled to three years of market exclusivity. A drug can also obtain pediatric market exclusivity in the U.S. and, if granted, adds six months to existing exclusivity periods and patent terms. This six-month exclusivity, which runs from the end of other exclusivity protection or patent term, may be granted based on the timely, voluntary, and as-agreed upon completion of a pediatric study in accordance with an FDA-issued "Written Request" for such a study.

#### ***Additional Regulation***

In addition to the foregoing, provincial, state and federal U.S. and Canadian laws regarding environmental protection and hazardous substances affect our business. These and other laws govern our use, handling and disposal of various biological, chemical and radioactive substances used in, and wastes generated by, our operations. If our operations result in contamination of the environment or expose individuals to hazardous substances, we could be liable for damages and governmental fines. We believe that we are in material compliance with applicable environmental laws and that continued compliance therewith will not have a material adverse effect on our business. We cannot predict, however, how changes in these laws may affect our future operations.

### ***Global Anti-Corruption Laws***

The U.S. Foreign Corrupt Practices Act and the Canadian Corruption of Foreign Public Officials Act, the U.S. Travel Act, the OECD Anti-Bribery Convention, Title 18 United States Code section 201, and any other applicable domestic or foreign anti-corruption or anti-bribery laws to which we are subject prohibit corporations and individuals from engaging in certain activities to obtain or retain business or to influence a person working in an official capacity. It is illegal to pay or authorize the payment of anything of value to any foreign government official, government staff member, political party or political candidate in an attempt to obtain or retain business or to otherwise influence a person working in an official capacity. We may also be held liable for the acts of our third party agents under the U.S. Foreign Corrupt Practices Act, Canadian Corruption of Foreign Public Officials Act, and other applicable anti-corruption and anti-bribery laws. Noncompliance with these laws could subject us to investigations, sanctions, settlements, prosecution, other enforcement actions, disgorgement of profits, significant fines, damages, other civil and criminal penalties or injunctions, suspension or debarment from contracting with certain persons, the loss of export privileges, whistleblower complaints, reputational harm, adverse media coverage, and other collateral consequences. Any investigations, actions or sanctions or other previously mentioned harm could have a material negative effect on our business, operating results and financial condition.

### ***Government Regulation Outside of the U.S.***

In addition to regulations in the U.S., we will be subject to a variety of regulations in other jurisdictions governing, among other things, research, development, testing, manufacture, quality control, approval, labeling, packaging, storage, record-keeping, promotion, advertising, distribution, post-approval monitoring and reporting, marketing and export and import of drugs, and reimbursement requirements. Generally, before a new drug can be marketed, considerable data demonstrating its quality, safety and efficacy must be obtained, organized into a format specific for each regulatory authority, submitted for review and approved by the regulatory authority. Whether or not we obtain FDA approval for a product, we must obtain the requisite approvals from regulatory authorities in foreign countries prior to the commencement of clinical studies or marketing of the product in those countries. Certain countries outside of the U.S. have a similar process that requires the submission of a clinical study application much like the IND prior to the commencement of human clinical studies. In the EU, for example, a CTA must be submitted to each country's national health authority and an independent ethics committee, much like the FDA and the IRB, respectively. Once the CTA is approved in accordance with a country's requirements, clinical study development may proceed. Similar requirements regarding a CTA and ethics approval exist in Canada.

The requirements and process governing the conduct of clinical studies, product licensing, coverage, pricing and reimbursement vary from country to country. In all cases, the clinical studies are conducted in accordance with GCP and the applicable regulatory requirements and the ethical principles that have their origin in the Declaration of Helsinki. The EU clinical trials legislation currently is undergoing a transition process mainly aimed at harmonizing and streamlining clinical-trial authorization, simplifying adverse-event reporting procedures, improving the supervision of clinical trials and increasing their transparency. Recently enacted Clinical Trials Regulation EU No 536/2014 is intended to ensure that the rules for conducting clinical trials in the EU are identical; however, it has not yet been fully implemented.

To obtain regulatory approval of an investigational drug under EU regulatory systems, we must submit a marketing authorization application, or MAA. The application used to file the NDA in the U.S. is similar to that required in the EU, with the exception of, among other things, country-specific document requirements. Reimbursement approval for the drug by regulatory authorities is also required before a drug may be commercialized. The EU also provides opportunities for market exclusivity. For example, in the EU, upon receiving marketing authorization, new chemical entities generally receive eight years of data exclusivity and an additional two years of market exclusivity. If granted, data exclusivity prevents regulatory authorities in the EU from referencing the innovator's data to assess a generic application. During the additional two-year period of market exclusivity, a generic marketing authorization can be submitted, and the innovator's data may be referenced, but no generic product can be marketed until the expiration of the market exclusivity. However, there is no guarantee that a product will be considered by the EU's regulatory authorities to be a new chemical entity, and products may not qualify for data exclusivity. Products receiving orphan designation in the EU can receive ten years of market exclusivity, during which time no similar medicinal product for the same indication may be placed on the market. An orphan product can also obtain an additional two years of market exclusivity in the EU for pediatric studies. No extension to any supplementary protection certificate can be granted on the basis of pediatric studies for orphan indications.

The criteria for designating an “orphan medicinal product” in the EU are similar in principle to those in the U.S. Under Article 3 of Regulation (EC) 141/2000, a medicinal product may be designated as orphan if (1) it is intended for the diagnosis, prevention or treatment of a life-threatening or chronically debilitating condition; (2) either (a) such condition affects no more than five in 10,000 persons in the EU when the application is made, or (b) the product, without the benefits derived from orphan status, would not generate sufficient return in the EU to justify investment; and (3) there exists no satisfactory method of diagnosis, prevention or treatment of such condition authorized for marketing in the EU, or if such a method exists, the product will be of significant benefit to those affected by the condition, as defined in Regulation (EC) 847/2000. Orphan medicinal products are eligible for financial incentives such as reduction of fees or fee waivers and are, upon grant of a marketing authorization, entitled to ten years of market exclusivity for the approved therapeutic indication. The application for orphan drug designation must be submitted before the application for marketing authorization. The applicant will receive a fee reduction for the marketing authorization application if the orphan drug designation has been granted, but not if the designation is still pending at the time the marketing authorization is submitted. Orphan drug designation does not convey any advantage in, or shorten the duration of, the regulatory review and approval process.

The 10-year market exclusivity may be reduced to six years if, at the end of the fifth year, it is established that the product no longer meets the criteria for orphan designation, for example, if the product is sufficiently profitable not to justify maintenance of market exclusivity. Additionally, marketing authorization may be granted to a similar product for the same indication at any time if:

- the second applicant can establish that its product, although similar, is safer, more effective or otherwise clinically superior;
- the applicant consents to a second orphan medicinal product application; or
- the applicant cannot supply enough orphan medicinal product.

For other countries outside of the EU, such as Canada and countries in Eastern Europe, Latin America or Asia, the requirements governing the conduct of clinical studies, product and establishment licensing, coverage, data protection, pricing and reimbursement vary from country to country. In all cases, again, the clinical studies are conducted in accordance with GCP and the applicable regulatory requirements and the ethical principles that have their origin in the Declaration of Helsinki.

If we fail to comply with applicable foreign regulatory requirements, we may be subject to, among other things, fines, suspension or withdrawal of regulatory approvals, product recalls, inability to import or export, seizure of products, operating restrictions and criminal prosecution.

### **Pharmaceutical Coverage, Pricing and Reimbursement**

Significant uncertainty exists as to the coverage and reimbursement status of any product candidates for which we obtain regulatory approval. In the U.S. and markets in other countries, sales of any products for which we receive regulatory approval for commercial sale will depend, in part, on the availability of coverage and adequate reimbursement from third-party payers. Third-party payers include government programs such as Medicare or Medicaid, managed care plans, private health insurers, and other organizations. These third-party payers may deny coverage or reimbursement for a product or therapy in whole or in part if they determine that the product or therapy was not medically appropriate or necessary. Third-party payers may attempt to control costs by limiting coverage to specific drug products on an approved list, or formulary, which might not include all of the FDA-approved drug products for a particular indication, and by limiting the amount of reimbursement for particular procedures or drug treatments.

The cost of pharmaceuticals continues to generate substantial governmental and third party payer interest. We expect that the pharmaceutical industry will experience pricing pressures due to the trend toward managed healthcare, the increasing influence of managed care organizations and additional legislative proposals. Third-party payers are increasingly challenging the price and examining the medical necessity and cost-effectiveness of medical products and services, in addition to their safety and efficacy. We may need to conduct expensive pharmacoeconomic studies in order to demonstrate the medical necessity and cost-effectiveness of our products, in addition to the costs required to obtain the FDA approvals. Our product candidates may not be considered medically necessary or cost-effective. A payer’s decision to provide coverage for a drug product does not imply that an adequate reimbursement rate will be approved. Adequate third-party reimbursement may not be available to enable us to maintain price levels sufficient to realize an appropriate return on our investment in product development.

Some third-party payers also require pre-approval or prior authorization of coverage for new or innovative drug therapies before they will reimburse healthcare providers who prescribe such therapies or patients who use such prescription drugs. While we cannot predict whether any proposed cost-containment measures will be adopted or otherwise implemented in the future, these requirements or any announcement or adoption of such proposals could have a material adverse effect on our ability to obtain adequate prices for our product candidates and to operate profitably.

In international markets, reimbursement and healthcare payment systems vary significantly by country, and many countries have instituted price ceilings on specific products and therapies. There can be no assurance that our products will be considered medically reasonable and necessary for a specific indication, that our products will be considered cost-effective by third-party payers, that coverage or an adequate level of reimbursement will be available or that the third-party payers' reimbursement policies will not adversely affect our ability to sell our products profitably.

In addition, in many foreign countries, the proposed pricing for a drug must be approved before it may be lawfully marketed. The requirements governing drug pricing and reimbursement vary widely from country to country. For example, the EU provides options for its member states to restrict the range of medicinal products for which their national health insurance systems provide reimbursement and to control the prices of medicinal products for human use. A member state may approve a specific price for the medicinal product or it may instead adopt a system of direct or indirect controls on the profitability of the company placing the medicinal product on the market. There can be no assurance that any country that has price controls or reimbursement limitations for pharmaceutical products will allow favorable reimbursement and pricing arrangements for any of our products. Historically, products launched in the EU do not follow price structures of the United States and generally prices tend to be significantly lower.

### **Healthcare Reform**

In the U.S. and foreign jurisdictions, there have been a number of legislative and regulatory changes to the healthcare system that could affect our future results of operations. In particular, there have been and continue to be a number of initiatives at the U.S. federal and state levels that seek to reduce healthcare costs.

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

Enacted in March 2010, the Patient Protection and Affordable Care Act, as amended, or PPACA, is a sweeping law intended to broaden access to health insurance, reduce or constrain the growth of healthcare spending, enhance remedies against healthcare fraud and abuse, add new transparency requirements for healthcare and health insurance industries, impose new taxes and fees on pharmaceutical and medical device manufacturers and impose additional health policy reforms. Among other things, PPACA revises the definition of "average manufacturer price" for reporting purposes, which could increase the amount of Medicaid drug rebates to states. Further, the new law imposes a significant annual fee on companies that manufacture or import branded prescription drug products. Substantial new provisions affecting compliance have also been enacted, which may affect our business practices with healthcare practitioners and a significant number of provisions are not yet, or have only recently become, effective. PPACA may continue to place downward pressure on pharmaceutical pricing, especially under the Medicare program, and may also increase our regulatory burdens and operating costs.

In addition, other legislative changes have been proposed and adopted since PPACA was enacted. These new laws may result in reductions in Medicare and other healthcare funding, which could have a material adverse effect on our customers and accordingly, our financial operations.

We expect that PPACA, as well as other healthcare reform measures that have been and may be adopted in the future, may result in more rigorous coverage criteria and in additional downward pressure on the price that we receive for any approved product, and could seriously harm our future revenue. Any reduction in reimbursement from Medicare or other government programs may result in a similar reduction in payments from private payers. The implementation of cost containment measures or other healthcare reforms may prevent us from being able to generate revenue, attain profitability, or commercialize our products.

The Trump administration and Congress have made changes to current health care laws and may continue to attempt broad sweeping changes to existing health care laws. We face uncertainties that might result from modification or repeal of any of the provisions of the PPACA, including as a result of current and future executive orders and legislative actions. The impact of those changes on us and the pharmaceutical industry as a whole is currently unknown. Any changes to the PPACA are likely to have an impact on our results of operations, and may have a material adverse effect on our result of operations. In particular, on December 18, 2019, the U.S. Court of Appeals for the 5th Circuit upheld the District Court ruling that the individual mandate was unconstitutional and remanded the case to the District Court to determine whether the remaining provisions of the ACA are invalid. We cannot predict how this decision or future decisions, including subsequent appeals, will impact our business, or what other healthcare programs and regulations will ultimately be implemented at the federal or state level or the effect of any future legislation or regulation in the United States may have on our business.

In addition, different pricing and reimbursement schemes exist in other countries. In the European Community, governments influence the price of pharmaceutical products through their pricing and reimbursement rules and control of national healthcare systems that fund a large part of the cost of those products to consumers. Some jurisdictions operate positive and negative list systems under which products may be marketed only once a reimbursement price has been agreed upon. Some of these countries may require, as condition of obtaining reimbursement or pricing approval, the completion of clinical trials that compare the cost-effectiveness of a particular product candidate to currently available therapies. Other member states allow companies to fix their own prices for medicines, but monitor and control company profits. The downward pressure on healthcare costs in general, particularly prescription drugs, has become very intense. As a result, increasingly high barriers are being erected to the entry of new products. In addition, in some countries, cross-border imports from low-priced markets exert a commercial pressure on pricing within a country.

### **Other Healthcare Laws and Compliance Requirements**

In the U.S., the research, manufacturing, distribution, sale and promotion of drug products that we are developing are subject to regulation by various federal, state and local authorities in addition to the FDA, including the Centers for Medicare & Medicaid Services, other divisions of the U.S. Department of Health and Human Services (e.g., the Office of Inspector General), the U.S. Department of Justice, state Attorneys General, and other state and local government agencies. For example, sales, marketing and scientific/educational grant programs must comply with applicable health care fraud and abuse laws, such as the federal Anti-Kickback Statute, the federal False Claims Act, Stark law, and implementing regulations, and similar state laws. Pricing and rebate programs must comply with the Medicaid Drug Rebate Program requirements of the Omnibus Budget Reconciliation Act of 1990, as amended, and the Veterans Health Care Act of 1992, as amended. If products are made available to authorized users of the Federal Supply Schedule of the General Services Administration, additional laws and requirements apply. Other laws and regulations that may apply to prescription drug manufacturers include the Sunshine Act, prescription drug price reporting requirements, and various state transparency and reporting laws. All business activities of prescription drug manufacturers are also potentially subject to federal and state consumer protection and unfair competition laws.

The federal Anti-Kickback Statute prohibits any person, including a prescription drug manufacturer (or a party acting on its behalf), from knowingly and willfully soliciting, receiving, offering or providing remuneration, directly or indirectly, to induce or reward either the referral of an individual, or the furnishing, recommending, or arranging for a good or service, for which payment may be made under a federal healthcare program such as the Medicare and Medicaid programs. This statute can be applied broadly to include arrangements between pharmaceutical manufacturers on one hand and any referral source on the other, including prescribers, purchasers, and formulary managers. The term "remuneration" has been broadly interpreted to include anything of value, including, for example, gifts, discounts, the furnishing of supplies or equipment, credit arrangements, payments of cash, waivers of payments, ownership interests, and service fees, unless expressly exempted or protected by a safe harbor. Further, the statute has been interpreted to cover any arrangement where one purpose of the remuneration was to obtain remuneration in exchange for referral or to induce further referrals for an item or service. Although there are a number of statutory exemptions and regulatory safe harbors protecting certain legitimate business arrangements from prosecution, the exemptions and safe harbors are drawn narrowly, and practices that involve remuneration intended to induce prescribing, purchasing or recommending may be subject to scrutiny if they do not qualify for an exemption or safe harbor. Our practices may not in all cases meet all of the criteria of an applicable safe harbor for protection from liability under the federal Anti-Kickback Statute. The reach of the Anti-Kickback Statute was broadened by PPACA, which, among other things, amends the intent requirement of the federal Anti-Kickback Statute such that the government does not need to prove that a person had the intent to specifically violate the statute in order to find a violation. In addition, the PPACA provides that the government may assert that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the federal False Claims Act (discussed below) or the civil monetary penalties statute, which imposes fines against any person who is determined to have presented or caused to be presented claims to a federal healthcare program that the person knows or should know is for an item or service that was not provided as claimed or is false or fraudulent. Additionally, many states have adopted laws similar to the federal Anti-Kickback Statute, and some of these state prohibitions apply to referral of patients for healthcare items or services reimbursed by any third-party payer, not only the Medicare and Medicaid programs in at least some cases, and do not expressly provide for certain safe harbors or impose different requirements for safe harbor protection under applicable state laws.

The federal False Claims Act imposes liability on any person or entity that, among other things, knowingly presents, or causes to be presented, a false or fraudulent claim for payment by a federal healthcare program. The qui tam provisions of the False Claims Act allow a private individual to bring civil actions on behalf of the federal government alleging that the defendant has submitted or cause to be submitted a false claim to the federal government, and to share in any monetary recovery. In recent years, the number of suits brought by private individuals has increased dramatically. In addition, various states have enacted false claims laws analogous to the False Claims Act. Many of these state laws apply where a claim is submitted to any third-party payer and not merely a federal healthcare program. There are many potential bases for liability under the False Claims Act. Liability arises, primarily, when an entity knowingly submits, or causes another to submit, a false claim for reimbursement to the federal government. The False Claims Act has been used to assert liability on the basis of inadequate care, kickbacks and other improper referrals, improperly reported government pricing metrics such as Best Price or Average Manufacturer Price, improper use of Medicare numbers when detailing the provider of services, improper promotion of off-label uses (i.e., uses not expressly approved by FDA in a drug's label), and allegations as to misrepresentations with respect to the services rendered. Our future activities relating to the reporting of discount and rebate information and other information affecting federal, provincial, state and third party reimbursement of our products, and the sale and marketing of our products and our service arrangements or data purchases, among other activities, may be subject to scrutiny under these laws. We are unable to predict whether we would be subject to actions under the False Claims Act or a similar state law, or the impact of such actions. However, the cost of defending such claims, as well as any sanctions imposed, could adversely affect our financial performance. Also, the Health Insurance Portability and Accountability Act of 1996, or HIPAA, created several new federal crimes, including healthcare fraud, and false statements relating to healthcare matters. The healthcare fraud statute prohibits knowingly and willfully executing a scheme to defraud any healthcare benefit program, including private third-party payers. The false statements statute prohibits knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services.

In addition, we may be subject to, or our marketing activities may be limited by, data privacy and security regulation in the U.S. and foreign jurisdictions in which we conduct our business, including jurisdictions in which we conduct our clinical trials. For example, HIPAA and its implementing regulations established uniform federal standards for certain "covered entities" (healthcare providers, health plans and healthcare clearinghouses) governing the conduct of certain electronic healthcare transactions and protecting the security and privacy of protected health information. The American Recovery and Reinvestment Act of 2009 included expansion of HIPAA's privacy and security standards called the Health Information Technology for Economic and Clinical Health Act, or HITECH. Among other things, HITECH makes HIPAA's privacy and security standards directly applicable to "business associates"—independent contractors or agents of covered entities that create, receive, maintain, or transmit protected health information in connection with providing a service for or on behalf of a covered entity. HITECH also increased the civil and criminal penalties that may be imposed against covered entities, business associates and possibly other persons, and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce the federal HIPAA laws and seek attorney's fees and costs associated with pursuing federal civil actions. In addition, in May 2016, the EU formally adopted the General Data Protection Regulation, or GDPR, which applies to all EU member states from May 25, 2018 and replaced the European Union Data Protection Directive. The GDPR has imposed many new or additional requirements including, but not limited to, obtaining consent of the individuals to whom the personal data relates, the nature and scope of notifications provided to the individuals, the security and confidentiality of the personal data, data breach notification and using third party processors in connection with the processing of the personal data. Failure to comply with the GDPR could subject us to regulatory sanctions, delays in clinical trials, criminal prosecution and/or civil fines or penalties. Additionally, GDPR creates a direct cause of action by individual data subjects. The GDPR is a complex law and the regulatory guidance is still evolving, including with respect to how the GDPR should be applied in the context of clinical trials or other transactions from that we may gain access to personal data. These changes in the law will increase our costs of compliance and result in greater legal risks. Other countries maintain different privacy laws that we are subject to.

The Physician Payment Sunshine Act, or the Sunshine Act, requires applicable manufacturers and certain distributors of prescription drugs, among other products, that are available for coverage by Medicare, Medicaid or the Children's Health Insurance Program to report annually to the Secretary of HHS: (i) payments or other transfers of value made by that entity, or by a third-party as directed by that entity, to physicians and teaching hospitals or to third parties on behalf of physicians or teaching hospitals; and (ii) physician ownership (including immediate family ownership) and investment interests in the entity. There are also an increasing number of state and local "sunshine" or transparency and reporting laws that require applicable manufacturers to make reports to states on pricing and marketing information. The U.S. federal government discloses the reported information on a publicly available website. Several states have enacted legislation requiring pharmaceutical companies to, among other things, establish marketing compliance programs, file periodic reports with the state, make periodic public disclosures on sales, marketing, pricing, clinical trials and other activities, and/or register their sales representatives, as well as to prohibit pharmacies and other healthcare entities from providing certain physician prescribing data to pharmaceutical companies for use in sales and marketing, and to prohibit certain other sales and marketing practices. These federal, state, and local laws may affect our sales, marketing, and other promotional activities by imposing administrative and compliance burdens on us. If we fail to track and report as required by these laws or otherwise comply with these laws, we could be subject to the penalty provisions of the pertinent state and federal authorities.

Because of the breadth of these health care laws and the narrowness of available statutory and regulatory exemptions, it is possible that some of our business activities could be subject to challenge under one or more of such laws. If our operations are found to be in violation of any of the federal and state laws described above or any other governmental regulations that apply to us, we may be subject to penalties, including criminal and significant civil monetary penalties, damages, fines, imprisonment, exclusion from participation in government healthcare programs, injunctions, recall or seizure of products, total or partial suspension of production, denial or withdrawal of pre-marketing product approvals, private qui tam actions brought by individual whistleblowers in the name of the government or refusal to allow us to enter into supply contracts, including government contracts, the curtailment or restructuring of our operations, and corporate integrity agreement, which impose certain compliance, certification and reporting obligations, any of which could adversely affect our ability to operate our business and our results of operations. To the extent that any of our products are sold in a foreign country or if we contract with vendors or independent contractors outside of the U.S., we may be subject to similar foreign laws and regulations, which may include, for instance, applicable post-approval requirements, including safety surveillance, anti-corruption/anti-bribery laws, anti-kickback laws, healthcare fraud and abuse laws, and implementation of corporate compliance programs and reporting of payments or transfers of value to healthcare professionals. While we are not aware of any current issues, we are unable to predict whether we will be subject to actions under applicable healthcare laws, or the impact of such actions on our business. However, the costs of defending such actions or claims, as well as any sanctions imposed, could result in a material adverse effect on our business or financial condition.

### **Environmental Matters**

Our operations require the use of hazardous materials (including biological materials) which subject us to a variety of federal, provincial and local environmental and safety laws and regulations. Some of the regulations under the current regulatory structure provide for strict liability, holding a party potentially liable without regard to fault or negligence. We could be held liable for damages and fines as a result of our, or someone else's, business operations should contamination of the environment or individual exposure to hazardous substances occur. We cannot predict how changes in laws or development of new regulations will affect our business operations or the cost of compliance.

### **Employees**

As of December 31, 2019, we had 104 employees, including 100 full-time employees. Of our employees, 73 were primarily engaged in research and development, 32 of whom hold a Ph.D. or M.D. (or equivalent) degree. None of our employees are represented by a labor union. We have not experienced any work stoppages, and we consider our relations with our employees to be good.

### **Research and Development**

We have committed, and expect to continue to commit, significant resources to developing new product candidates. We have assembled an experienced research and development team with scientific and clinical development personnel. Our research and development expenses for the years ended December 31, 2019 and 2018 were \$38.8 million and \$23.6 million, respectively.

### **Manufacturing**

We currently rely, and expect to continue to rely, on third parties and our collaborators for the manufacture of our product candidates for pre-clinical and clinical testing, as well as for commercial manufacture if our product candidates receive marketing approval. Accordingly, we have not internally developed any manufacturing facilities or hired related personnel.

To date, we have obtained materials for our product candidates from multiple third-party manufacturers. We believe that all of the materials required for the manufacture of our product candidates can be obtained from more than one source. However, the manufacturing processes for each of our product candidates vary and sourcing adequate supplies may be made more difficult depending on the type of product candidate involved. Our product candidates generally can be manufactured in reliable and reproducible synthetic processes from readily available starting materials. This chemistry generally is amenable to scale-up and does not require unusual equipment in the manufacturing process.

## Corporate Information

We were incorporated in the Province of British Columbia on November 5, 1996 under the predecessor to the Business Corporations Act (British Columbia) under the name “Xenon Bioresearch Inc.” We continued from British Columbia to the federal jurisdiction pursuant to Section 187 of the Canada Business Corporations Act, or the CBCA, on May 17, 2000 and concurrently changed our name to “Xenon Genetics Inc.” We registered as an extra-provincial company in British Columbia on July 10, 2000 and changed our name to “Xenon Pharmaceuticals Inc.” on August 24, 2004. We have one wholly-owned subsidiary as at December 31, 2019, Xenon Pharmaceuticals USA Inc., which was incorporated in Delaware on December 2, 2016. Our principal executive offices are located at 200 – 3650 Gilmore Way, Burnaby, British Columbia, Canada V5G 4W8, and our telephone number is (604) 484-3300. We are a reporting issuer in British Columbia, Alberta and Ontario, but our shares are not listed on any recognized Canadian stock exchange. Our common shares trade on the Nasdaq Global Market under the symbol “XENE.”

## Where You Can Find Additional Information

We make available free of charge through our investor relations website, <http://investor.xenon-pharma.com>, our annual reports, quarterly reports, current reports, proxy statements and all amendments to those reports as soon as reasonably practicable after such material is electronically filed or furnished with the U.S. Securities and Exchange Commission, or SEC. These reports may also be obtained without charge by contacting Investor Relations, Xenon Pharmaceuticals Inc., 200 – 3650 Gilmore Way, Burnaby, British Columbia, Canada V5G 4W8, e-mail: [investors@xenon-pharma.com](mailto:investors@xenon-pharma.com). Our website and the information contained therein or incorporated therein are not intended to be incorporated into this Annual Report on Form 10-K. The SEC maintains a website that contains reports, proxy and information statements, and other information regarding reports that we file or furnish electronically with them at [www.sec.gov](http://www.sec.gov). Additional information related to Xenon is also available on SEDAR at [www.sedar.com](http://www.sedar.com).

## Item 1A. Risk Factors

*You should carefully consider the following risk factors, in addition to the other information contained in this report, including the section of this report captioned “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our financial statements and related notes. If any of the events described in the following risk factors and the risks described elsewhere in this report occurs, our business, operating results and financial condition could be seriously harmed. This report on Form 10-K also contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of factors that are described below and elsewhere in this report.*

## Risks Related to Our Financial Condition and Capital Requirements

***We have incurred significant losses since our inception and anticipate that we will continue to incur significant losses for the foreseeable future.***

We do not expect to have sustained profitability for the foreseeable future. We had net losses of \$41.6 million for the year ended December 31, 2019 and an accumulated deficit of \$249.7 million as of December 31, 2019, which were driven by expenses incurred in connection with our research and development programs and from general and administrative costs associated with our operations.

We have devoted most of our financial resources to research and development, including our clinical and pre-clinical development activities. To date, we have financed our operations through the sale of equity securities, funding received from our licensees and collaborators, debt financing and, to a lesser extent, government funding. We have not generated any significant revenue from product sales and our product candidates will require substantial additional investment before they may provide us with any revenue.

We expect to incur significant expenses and increasing operating losses for the foreseeable future as we:

- continue our research and pre-clinical and clinical development of our product candidates;
- expand the scope of our clinical studies for our current and prospective product candidates;
- initiate additional pre-clinical, clinical or other studies for our product candidates;
- change or add additional manufacturers or suppliers and manufacture drug supply and drug product for clinical trials and commercialization;
- seek regulatory and marketing approvals for any of our product candidates that successfully complete clinical studies;
- seek to identify and validate additional product candidates;
- acquire or in-license other product candidates and technologies;

- make milestone or other payments under our in-license or other agreements, including, without limitation, payments to Memorial University of Newfoundland, 1st Order Pharmaceuticals, Inc. and other third parties;
- maintain, protect and expand our intellectual property portfolio;
- establish a sales, marketing and distribution infrastructure to commercialize any products for which we may obtain marketing approval;
- create additional infrastructure to support our operations and our product development and planned future commercialization efforts; and
- experience any delays or encounter issues with any of the above.

Our expenses could increase beyond expectations for a variety of reasons, including if we are required by the U.S. Food and Drug Administration, or FDA, the European Medicines Agency, or EMA, Health Canada, or other regulatory agencies, domestic or foreign, to perform clinical and other studies in addition to those that we currently anticipate. Our prior losses, combined with expected future losses, have had and will continue to have an adverse effect on our shareholders' equity.

***We have not generated any significant royalty revenue from product sales and may never become profitable on a U.S. GAAP basis.***

Our ability to generate meaningful revenue and achieve profitability on a U.S. GAAP basis depends on our ability, alone or with strategic collaborators, to successfully complete the development of, and obtain the regulatory approvals necessary to commercialize, our product candidates. Substantially all of our revenue since inception has consisted of upfront and milestone payments associated with our collaboration and license agreements. Revenue from these agreements is dependent on successful development of our product candidates by us or our collaborators. We have not generated any significant royalty revenue from product sales, and do not otherwise anticipate generating revenue from product sales for the foreseeable future, if ever. If any of our product candidates fail in clinical trials or do not gain regulatory approval, or if any of our future products, if any, once approved, fail to achieve market acceptance or adequate market share, we may never become profitable. Our ability to generate future revenue from product sales depends heavily on our success, and the success of our collaborators, in:

- completing research, pre-clinical and clinical development of our product candidates;
- seeking and obtaining regulatory and marketing approvals for product candidates for which we complete clinical studies;
- commercializing products for which we obtain regulatory and marketing approval, either with a collaborator or, if launched independently, by establishing sales, marketing and distribution infrastructure;
- negotiating favorable terms in any collaboration, licensing or other arrangements into which we may enter;
- obtaining market acceptance of products for which we obtain regulatory and marketing approval as therapies;
- addressing any competing technological and market developments;
- establishing and maintaining supply and manufacturing relationships with third parties that can provide adequate (in amount and quality) products and services to support clinical development and the market demand for any approved products in the future;
- developing sustainable, scalable, reproducible, and transferable manufacturing processes for any of our products approved in the future;
- maintaining, protecting, expanding and enforcing our portfolio of intellectual property rights, including patents, trade secrets and know-how;
- implementing additional internal systems and infrastructure, as needed; and
- attracting, hiring and retaining qualified personnel.

The scope of our future revenue will also depend upon the size of any markets in which our product candidates receive approval and the availability of insurance coverage and the availability and amount of reimbursement from third-party payers for future products, if any. If we are unable to achieve sufficient revenue to become profitable and remain so, our financial condition and operating results will be negatively impacted, and the market price of our common shares might be adversely impacted.

***We will likely need to raise additional funding, which may not be available on acceptable terms, if at all. Failure to obtain this necessary capital when needed may force us to delay, limit or terminate our product development efforts or other operations.***

Since our inception, we have dedicated most of our resources to the discovery and development of our pre-clinical and clinical product candidates, and we expect to continue to expend substantial resources doing so for the foreseeable future. These expenditures will include costs associated with research and development, potential milestone payments and royalties to third parties, manufacturing of product candidates and products approved for sale, conducting pre-clinical experiments and clinical trials and obtaining and maintaining regulatory approvals, as well as commercializing any products later approved for sale. During the year ended December 31, 2019, we incurred \$38.8 million of costs associated with research and development, exclusive of costs incurred by our collaborators in developing our product candidates.

Our current cash and cash equivalents and marketable securities are not expected to be sufficient to complete clinical development of any of our product candidates and prepare for commercializing any product candidate which receives regulatory approval. Accordingly, we will likely require substantial additional capital to continue our clinical development and potential commercialization activities. Our future capital requirements depend on many factors, including but not limited to:

- the number and characteristics of the future product candidates we pursue either from our internal research efforts or through acquiring or in-licensing other product candidates or technologies;
- the scope, progress, results and costs of independently researching and developing any of our future product candidates, including conducting pre-clinical research and clinical trials;
- whether our existing collaborations generate substantial milestone payments and, ultimately, royalties on future approved products for us;
- the timing of, and the costs involved in, obtaining regulatory approvals for any future product candidates we develop independently;
- the timing and magnitude of potential milestone payments and royalties under our product acquisition and in-license agreements;
- the cost of commercializing any future products we develop independently that are approved for sale;
- the cost of manufacturing our future product candidates and products, if any;
- our ability to maintain existing collaborations and to establish new collaborations, licensing or other arrangements and the financial terms of such agreements;
- the costs involved in preparing, filing, prosecuting, maintaining, defending and enforcing patents, including litigation costs and the outcome of such litigation; and
- the timing, receipt and amount of sales of, or royalties on, our future products, if any.

We are unable to estimate the funds we will actually require to complete research and development of our product candidates or the funds required to commercialize any resulting product in the future.

Based on our research and development plans and our timing expectations related to the progress of our programs, we expect that our existing cash and cash equivalents and marketable securities as of the date of this report will enable us to fund our operating expenses and capital expenditure requirements for at least the next 12 months.

Our operating plan may change as a result of many factors currently unknown to us, and we may need to seek additional funds sooner than planned, through public or private equity or debt financings, government or other third-party funding, marketing and distribution arrangements and other collaborations, strategic alliances and licensing arrangements or a combination of these approaches. Raising funds in the future may present additional challenges and future financing may not be available in sufficient amounts or on terms acceptable to us, if at all.

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

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

***We are party to a loan and security agreement that contains operating and financial covenants that may restrict our business and financing activities and we may be required to repay the outstanding indebtedness in an event of default, which could have a materially adverse effect on our business.***

In August 2018, we entered into an amended and restated loan and security agreement with Silicon Valley Bank providing for a term loan to us with an aggregate principal amount of \$15.5 million. Borrowings under our amended and restated loan and security agreement are secured by substantially all of our assets except intellectual property and subject to certain other exceptions. The loan and security agreement restricts our ability, among other things, to:

- sell, transfer or otherwise dispose of any of our business assets or property, subject to limited exceptions;
- make material changes to our business;
- enter into transactions resulting in significant changes to the voting control of our stock;
- make certain changes to our organizational structure;
- consolidate or merge with other entities or acquire other entities;
- incur additional indebtedness or create encumbrances on our assets;
- pay dividends, other than dividends paid solely in our common shares, or make distributions on and, in certain cases, repurchase our capital stock;
- enter into certain transactions with our affiliates;
- repay subordinated indebtedness; or
- make certain investments.

In addition, we are required under our amended and restated loan agreement and security agreement to comply with various affirmative covenants. The covenants and restrictions and obligations in our amended and restated loan and security agreement, as well as any future financing agreements that we may enter into, may restrict our ability to finance our operations, engage in business activities or expand or fully pursue our business strategies. Our ability to comply with these covenants may be affected by events beyond our control, and we may not be able to meet those covenants. A breach of any of these covenants could result in a default under the amended and restated loan and security agreement, which could cause all of the outstanding indebtedness under the facility to become immediately due and payable.

If we are unable to generate sufficient cash available to repay our debt obligations when they become due and payable, either when they mature, or in the event of a default, we may not be able to obtain additional debt or equity financing on favorable terms, if at all, which may negatively impact our business operations and financial condition.

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

The terms of any financing arrangements we enter into may adversely affect the holdings or the rights of our shareholders and the issuance of additional securities, whether equity or debt, by us, or the possibility of such issuance, may cause the market price of our common shares to decline. The sale of additional equity or convertible securities also would dilute all of our shareholders. For example, in November 2019, we entered into the November 2019 sales agreement with Jefferies LLC, or Jefferies, and Stifel, Nicolaus & Company, Incorporated, or Stifel, to sell up to \$50.0 million of our common shares, from time to time, through an “at-the-market” equity offering program under which Jefferies and Stifel acted as sales agents. As of January 14, 2020, we had sold an aggregate of 3,252,330 common shares for net proceeds of \$48.8 million, net of commissions paid, but excluding estimated transaction expenses. Additionally, in December 2019, pursuant to the terms of our collaboration agreement with Neurocrine Biosciences, we issued 1,408,847 common shares to Neurocrine Biosciences for an aggregate purchase price of \$20.0 million. In January 2020, we completed an underwritten public offering of 3,750,000 of our common shares at a public offering price of \$16.00 per share for net proceeds of \$56.4 million, net of underwriting discounts and commissions, but before other offering expenses. In February 2020, the underwriters of the January 2020 public offering exercised their option to purchase an additional 562,500 of our common shares at a public offering price of \$16.00 per share, raising additional net proceeds of \$8.5 million, net of underwriting discounts and commissions, but before other offering expenses. We are also party to an amended and restated loan and security agreement with Silicon Valley Bank pursuant to which we have borrowed an aggregate principal amount of \$15.5 million. Our loan pursuant to the amended and restated loan and security agreement is secured by substantially all of our assets except intellectual property and the agreement requires us to comply with various affirmative and negative covenants. The incurrence of additional indebtedness would result in increased fixed payment obligations and, potentially, the imposition of additional restrictive covenants. Such additional covenants could include limitations on our ability to incur additional debt, limitations on our ability to acquire, sell or license intellectual property rights and other operating restrictions that could adversely impact our ability to conduct our business. We could also be required to seek funds through arrangements with collaborators or otherwise at an earlier stage than otherwise would be desirable resulting in the loss of rights to some of our product candidates or other unfavorable terms, any of which may have a material adverse effect on our business, operating results and prospects. In addition, any additional fundraising efforts may divert our management from their day-to-day activities, which may adversely affect our ability to develop and commercialize our product candidates.

***Unstable market and economic conditions may have serious adverse consequences on our business and financial condition.***

Global credit and financial markets experienced extreme disruptions at various points over the last decade, characterized by diminished liquidity and credit availability, declines in consumer confidence, declines in economic growth, increases in unemployment rates, and uncertainty about economic stability. If another such disruption in credit and financial markets and deterioration of confidence in economic conditions occurs, our business may be adversely affected. If the equity and credit markets were to deteriorate significantly in the future, it may make any necessary equity or debt financing more difficult to complete, more costly, and more dilutive. Failure to secure any necessary financing in a timely manner and on favorable terms could have a material adverse effect on our growth strategy, financial performance and the market price of our common shares could require us to delay or abandon development or commercialization plans. In addition, there is a risk that one or more of our current collaborators, service providers, manufacturers and other partners would not survive or be able to meet their commitments to us under such circumstances, which could directly affect our ability to attain our operating goals on schedule and on budget.

***We are subject to risks associated with currency fluctuations which could impact our results of operations.***

As of December 31, 2019, approximately 8% of our cash and cash equivalents and marketable securities were denominated in Canadian dollars. We incur significant expenses in Canadian dollars in connection with our operations in Canada. We do not currently engage in foreign currency hedging arrangements for our Canadian dollar expenditures, and, consequently, foreign currency fluctuations may adversely affect our earnings; however, in the future, we may engage in exchange rate hedging activities in an effort to mitigate the impact of exchange rate fluctuations. Any hedging technique we implement may fail to be effective. If our hedging activities are not effective, changes in currency exchange rates may have a more significant impact on the market price of our common shares.

## Risks Related to Our Business

***We, or our collaborators, may fail to successfully develop our product candidates.***

Our and our collaborators' clinical product candidates, which include XEN1101, XEN007, and NBI-921352 (previously known as XEN901 and being developed by our collaborator Neurocrine Biosciences), along with product candidates we expect to enter clinical development, which include XEN496, FX301 (being developed by Flexion Therapeutics, Inc.) and our pre-clinical compounds, are in varying stages of development and will require substantial clinical development, testing and regulatory approval prior to commercialization. It may be several more years before these product candidates or any of our other product candidates receive marketing approval, if ever. If any of our product candidates fail to become approved products, our business, growth prospects, operating results and financial condition may be adversely affected and a decline in the market price of our common shares could result.

***We and our collaborators face substantial competition in the markets for our product candidates, which may result in others discovering, developing or commercializing products before us or doing so more successfully than we or our collaborators do.***

The biotechnology and pharmaceutical industries are characterized by rapidly advancing technologies, intense competition and a strong emphasis on proprietary products. We face potential competition in drug discovery and product development from many different approaches and sources, including major pharmaceutical, specialty pharmaceutical and biotechnology companies, academic institutions, governmental agencies, as well as public and private research institutions. Any product candidates that we or our collaborators successfully develop and commercialize will compete with existing products and any new products that may become available in the future.

The key competitive factors affecting the success of all of our product candidates, if approved, are likely to be their efficacy, safety, convenience and price, the effectiveness and safety of alternative products, the level of generic competition, and the availability of coverage and adequate reimbursement from government and other third-party payers.

Many of the companies against which we are competing or against which we may compete in the future have significantly greater financial resources and expertise in research and development, manufacturing, pre-clinical testing, conducting clinical trials, obtaining regulatory approvals and marketing approved products than we, or our collaborators, do. Mergers and acquisitions in the pharmaceutical and biotechnology industries may result in even more resources being concentrated among a smaller number of our competitors. Smaller or early stage companies may also prove to be significant competitors, particularly through collaboration arrangements with large and established companies.

Our commercial opportunities could be reduced or eliminated if our competitors develop and commercialize products or therapies that are safer, more effective, have fewer or less severe side effects, are more convenient or are less expensive than any products that we may develop. Our competitors also may obtain FDA, EMA, Health Canada or other regulatory approval for their products more rapidly than we may obtain approval for ours, which could result in our competitors establishing a strong market position before we are able to enter the market. In addition, our ability to compete may be affected by decisions made by insurers or other third-party payers.

To the extent that we are unable to compete effectively against one or more of our competitors in these areas, our business will not grow and our financial condition, results of operations and the market price of our common shares may suffer.

If more than one of our proprietary or partnered products were approved for the treatment of epilepsy, we anticipate that they could potentially compete with one another and other anti-seizure medications, or ASMs. Commonly used ASMs, among others, include phenytoin, levetiracetam, brivaracetam, cenobamate, carbamazepine, clobazam, lamotrigine, valproate, oxcarbazepine, topiramate, lacosamide, ethosuximide, perampanel and cannabidiol. The FDA has not yet approved any drug products specifically for the KCNQ2 developmental and epileptic encephalopathy indication (otherwise known as KCNQ2-DEE or EIEE7) or for the SCN8A developmental and epileptic encephalopathy indication (otherwise known as SCN8A-DEE or EIEE13), an early infantile epileptic encephalopathy due to gain-of-function mutations in the SCN8A gene that encodes the Nav1.6 sodium channel. There are other ASMs in development that could potentially compete with our products, including products in development from Eisai Co., Ltd., Insys Therapeutics Inc., Knopp Biosciences LLC, Marinus Pharmaceuticals, Inc., Ovid Therapeutics Inc., Praxis Bioresearch, Sage Therapeutics, SK Life Science Inc., Sunovion Pharmaceuticals Inc., Supernus Pharmaceuticals, Inc., Takeda Pharmaceutical Company Ltd., UCB, Inc., Upsher-Smith Laboratories, Inc., and Zogenix, Inc.

Drug discovery and development for various pain applications is intensely competitive. There are a large number of approved products for neuropathic pain, inflammatory pain and other pain indications. These approved products include capsaicin, celecoxib, lidocaine, narcotic analgesics, gabapentin, and pregabalin. We are also aware of development programs at several pharmaceutical and biotechnology companies that are developing Nav1.7 inhibitors or other sodium channel inhibitors for the treatment of pain, including Amgen Inc., AstraZeneca PLC, Biogen Inc., Bristol-Myers Squibb Company, Dainippon Sumitomo Co., Ltd., Eli Lilly and Company, H. Lundbeck A/S, Merck, NeuroQuest Inc., Newron Pharmaceuticals SpA, Vertex Pharmaceuticals Inc., Voyager Therapeutics, Inc. and Chromocell Corporation in collaboration with its partner Astellas Pharma Inc. Moreover, we are aware of various other product candidates in development that target other mechanisms of action to treat various pain indications, including calcium channel inhibitors, nerve growth factor inhibitors, and Nav1.8 inhibitors.

***We have no marketed proprietary products and have not yet advanced a product candidate beyond Phase 2 clinical trials, which makes it difficult to assess our ability to develop our future product candidates and commercialize any resulting products independently.***

As a company, we have no experience in Phase 3 and later stage clinical development or in conducting clinical trials in pediatric indications, and related regulatory requirements or the commercialization of products. We have not yet demonstrated our ability to independently and repeatedly conduct clinical development after Phase 2, successfully conduct an international multi-center clinical trial, conduct a pivotal clinical trial, obtain regulatory approval, manufacture drug product on a commercial scale or arrange for a third party to do so on our behalf, and commercialize therapeutic products. We will need to develop such abilities if we are to execute on our business strategy to develop and independently commercialize product candidates for orphan and niche indications. To execute on our business plan for the development of independent programs, we will need to successfully:

- execute our clinical development and manufacturing plans for later-stage product candidates;
- obtain required regulatory approvals in each jurisdiction in which we will seek to commercialize products;
- build and maintain appropriate sales, distribution and marketing capabilities;
- gain market acceptance for our future products, if any; and
- manage our spending as costs and expenses increase due to clinical trials, regulatory approvals and commercialization activities.

If we are unsuccessful in accomplishing these objectives, we will not be able to develop and commercialize any future product candidates independently and could fail to realize the potential advantages of doing so.

***If we are not successful in discovering, acquiring or in-licensing product candidates in addition to XEN496, XEN1101 and XEN007, our ability to expand our business and achieve our strategic objectives may be impaired.***

We have built a product development pipeline by identifying product candidates either from our internal research efforts or through acquiring or in-licensing other product candidates or technologies. To date, our internal discovery efforts have yielded multiple development candidates, including XEN901, which we licensed to Neurocrine Biosciences and is now known as NBI-921352, and XEN402, which has been acquired by Flexion to use in its product candidate FX301. Both our internal discovery efforts and our assessment of potential acquisition or in-licensing opportunities require substantial technical, financial and human resources, regardless of whether we identify any viable product candidates.

If we are unable to identify additional product candidates suitable for clinical development and commercialization either from our internal research efforts or through acquiring or in-licensing other product candidates or technologies, we may not be able to obtain product revenue in future periods, which likely would result in significant harm to our financial position and adversely impact the market price of our common shares.

***Our approach to drug discovery is unproven, and we do not know whether we will be able to develop any products of commercial value.***

Our approach to drug discovery may not reproducibly or cost-effectively result in the discovery of product candidates and development of commercially viable products that safely and effectively treat human disease.

Our drug discovery efforts may initially show promise in identifying additional potential product candidates yet fail to yield viable product candidates for clinical development or commercialization. Such failure may occur for many reasons, including the following: any product candidate may, on further study, be shown to have serious or unexpected side effects or other characteristics that indicate it is unlikely to be safe or otherwise does not meet applicable regulatory criteria; and any product candidate may not be capable of being produced in commercial quantities at an acceptable cost, or at all.

If our discovery activities fail to identify novel targets for drug discovery, or such targets prove to be unsuitable for treating human disease, or we are unable to develop product candidates with specificity and selectivity for such targets, we will fail to develop viable products. If we fail to develop and commercialize viable products, we will not achieve commercial success.

***If we fail to attract and retain senior management and key personnel, we may be unable to successfully develop our product candidates, perform our obligations under our collaboration agreements, conduct our clinical trials and commercialize our product candidates.***

Our success depends in part on our continued ability to attract, retain and motivate highly qualified management, clinical and scientific personnel.

We could experience difficulties attracting and retaining qualified employees as competition for qualified personnel in the biotechnology and pharmaceutical field is intense. We are highly dependent upon our senior management, particularly Dr. Simon Pimstone, our Chief Executive Officer, and Mr. Ian Mortimer, our President and Chief Financial Officer, as well as other employees. The loss of services of either of these individuals or one or more of our other members of senior management could materially delay or even prevent the successful development of our product candidates.

In addition, we will need to hire additional personnel as we expand our clinical development activities and develop commercial capabilities, including a sales infrastructure to support our independent commercialization efforts. We may not be able to attract and retain personnel on acceptable terms given the competition among numerous pharmaceutical and biotechnology companies for individuals with similar skill sets. The inability to recruit or loss of the services of any executive or key employee may impede the progress of our research, development and commercialization objectives.

***Our employees, collaborators and other personnel may engage in misconduct or other improper activities, including non-compliance with regulatory standards and requirements and insider trading.***

We are exposed to the risk of fraud or other misconduct by our employees, collaborators, vendors, principal investigators, consultants and commercial partners. Misconduct by these parties could include intentional failures to comply with the regulations of the FDA, EMA, Health Canada and other regulators, provide accurate information to the FDA, EMA, Health Canada and other regulators, comply with data privacy and security and healthcare fraud and abuse laws and regulations in the U.S. and abroad, report financial information or data accurately or disclose unauthorized activities to us. In particular, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, misconduct, kickbacks, self-dealing and other abusive practices. Additionally, laws regarding data privacy and security, including the federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, or HITECH, the General Data Protection Regulation (EU) 2016/679, or GDPR, and the Personal Information Protection and Electronic Documents Act, or PIPEDA, as well as comparable laws in other jurisdictions, may impose obligations with respect to safeguarding the privacy, use, security and transmission of individually identifiable health information such as genetic material or information we have obtained through our direct-to-patient web-based recruitment approach for identifying patients with rare or extreme phenotypes or patients identified for clinical trials.

Various laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. Any misconduct could also involve the improper use of information obtained in the course of clinical studies, which could result in regulatory sanctions and cause serious harm to our reputation. We have adopted a code of conduct applicable to all of our employees, officers, directors, agents and representatives, including consultants, but it is not always possible to identify and deter misconduct, and the precautions we take to detect and prevent misconduct may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to comply with these laws and regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, including the imposition of significant fines or other sanctions, exclusion from participation in government healthcare programs, or the curtailment or restructuring of our operations.

***We may encounter difficulties in managing our growth, including headcount, and expanding our operations successfully.***

Our business strategy involves continued development and, where development is successful, commercialization of select product candidates for orphan and niche indications. In order to execute on this strategy, we will need to build out a regulatory, sales, manufacturing, distribution and marketing infrastructure and expand our development capabilities or contract with third parties to provide these capabilities and infrastructure for us. To achieve this, we will need to identify, hire and integrate personnel who have not worked together as a group previously.

As our operations expand, we expect that we will need to manage additional relationships with various strategic collaborators, suppliers and other third parties.

Dr. Simon Pimstone devotes a small amount of his time to clinical work outside of his duties at our company, conducting, generally, one outpatient clinic per week. Future growth will impose significant added responsibilities on members of management, and our management may need to divert a disproportionate amount of its attention away from our day-to-day activities and devote a substantial amount of time to managing these growth activities.

If we are unable to effectively manage our growth, our expenses may increase more than expected, our ability to generate and grow revenue could be reduced, and we may not be able to implement our business strategy. Our future financial performance and our ability to commercialize product candidates and compete effectively will depend, in part, on our ability to effectively manage any future growth.

***Our business and operations could suffer in the event of system failures.***

Computer system, network or telecommunications failures due to events such as damage from malware, unauthorized access, terrorism, war, or natural disasters could interrupt our internal or partner operations. For example, the loss of pre-clinical trial data, data from completed or ongoing clinical trials for our product candidates or other confidential information could result in delays in our regulatory filings and development efforts, significantly increase our costs and result in other adverse impacts to our business. To the extent that any disruption or cybersecurity breach was to result in a loss of or damage to our data, or inappropriate disclosure of confidential or proprietary information, we could incur liability and other remediation costs, and the development of our product candidates could be delayed. While we have implemented security measures and, to date, have not detected a cybersecurity breach of our systems nor experienced a material system failure, our internal computer systems and the external systems and services used by our third-party contract manufacturers, or CMOs, third-party contract research organizations, or CROs, or other contractors, consultants, directors and partners remain potentially vulnerable to damage from these events.

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

If we engage in significant cross-border and international activities, we will be subject to risks related to international operations, including:

- different regulatory requirements for initiating clinical trials and maintaining approval of drugs in foreign countries;
- reduced protection for intellectual property rights in certain countries;
- unexpected changes in tariffs, trade barriers and regulatory requirements;
- economic weakness, including inflation, political instability or open conflict in particular foreign economies and markets;
- differing and multiple payor reimbursement regimes, government payors or patient self-pay systems;
- compliance with tax, employment, immigration and labor laws for employees living or traveling abroad;
- foreign currency fluctuations, which could result in increased operating expenses and reduced revenue, and other obligations of doing business in another country;
- workforce uncertainty in countries where labor unrest is more common than in North America;
- likelihood of potential or actual violations of domestic and international anti-corruption laws, such as the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act, or of U.S. and international import, export and re-export control and sanctions laws and regulations, which likelihood may increase with an increase of operations in foreign jurisdictions;
- tighter restrictions on privacy and the collection and use of data, including clinical data and genetic material, may apply in jurisdictions outside of North America; and
- business interruptions resulting from geopolitical actions, including war and terrorism, or natural disasters including earthquakes, typhoons, floods and fires.

If any of these issues were to occur, our business could be materially harmed.

***We face risks related to health epidemics and other outbreaks, which could significantly disrupt our operations and/or business.***

Our business could be adversely impacted by the effects of the coronavirus (COVID-19) outbreak originating in China, or by other epidemics. Our supply chain for raw materials, drug substance or drug product is worldwide, including China, and accordingly could be subject to disruption. There may be restrictions on the export or shipment of raw materials, drug substance or drug product that could materially delay our business or clinical trials.

Certain of our research and development efforts are also conducted globally, including our ongoing Phase 2b XEN1101 (X-TOLE) clinical trial, which includes investigative sites in North America and Europe. A health epidemic or other outbreak, including the current COVID-19 outbreak, may materially and adversely affect our business, financial condition and results of operations. The extent to which COVID-19 impacts our results will depend on future developments, which are highly uncertain and cannot be predicted, including new information which may emerge concerning the severity of COVID-19 and the actions to contain COVID-19 or treat its impact, among others.

***U.S. holders of our common shares may suffer adverse tax consequences if we are characterized as a passive foreign investment company.***

Generally, for any taxable year in which 75% or more of our gross income is passive income, or at least 50% of the average quarterly value of our assets (which may be determined in part by the market value of our common shares, which is subject to change) are held for the production of, or produce, passive income, we would be characterized as a passive foreign investment company, or PFIC, for U.S. federal income tax purposes. Based on the price of our common shares and the composition of our gross income and gross assets, we believe that we were a PFIC for the taxable year ended December 31, 2018, and we could be a PFIC in subsequent years. Based on the price of our common shares and the composition of our gross income and gross assets, we do not believe we were a PFIC for the taxable year ended December 31, 2019. Our status as a PFIC is a fact-intensive determination made on an annual basis, and we cannot provide any assurance regarding our PFIC status for future taxable years.

If we are a PFIC for any year, U.S. holders of our common shares may suffer adverse tax consequences. Gains realized by non-corporate U.S. holders on the sale of our common shares would be taxed as ordinary income, rather than as capital gain, and the preferential tax rate applicable to dividends received on our common shares would be lost. Interest charges would also be added to taxes on gains and dividends realized by all U.S. holders. U.S. holders should consult their own tax advisors with respect to their particular circumstances.

A U.S. holder may avoid these adverse tax consequences by timely making a qualified electing fund election. For each year that we would meet the PFIC gross income or asset test, an electing U.S. holder would be required to include in gross income its pro rata share of our net ordinary income and net capital gains, if any. A U.S. holder may make a qualified electing fund election only if we commit to provide U.S. holders with their pro rata share of our net ordinary income and net capital gains. We will provide, upon request, our U.S. holders with the information that is necessary in order for them to make a qualified electing fund election and to report their common shares of ordinary earnings and net capital gains for each year for which we may be a PFIC. U.S. holders should consult their own tax advisors with respect to making this election and the related reporting requirements.

A U.S. holder may also mitigate the adverse tax consequences by timely making a mark-to-market election. Generally, for each year that we meet the PFIC gross income or asset test, an electing U.S. holder would include in gross income the increase in the value of its common shares during each of its taxable years and deduct from gross income the decrease in the value of such shares during each of its taxable years. A mark-to-market election may be made and maintained only if our common shares are regularly traded on a qualified exchange, including the Nasdaq Global Market, or Nasdaq. Whether our common shares are regularly traded on a qualified exchange is an annual determination based on facts that, in part, are beyond our control. Accordingly, a U.S. holder might not be eligible to make a mark-to-market election to mitigate the adverse tax consequences if we are characterized as a PFIC. U.S. holders should consult their own tax advisors with respect to the possibility of making this election.

In addition, if we are or become a PFIC (or our PFIC status is uncertain), it may deter certain U.S. investors from purchasing our common shares, which could have an adverse impact on the market price of our common shares.

***We may become subject to income tax in jurisdictions in which we are organized or operate, which would reduce our future earnings.***

There is a risk that we may become subject to income tax in jurisdictions outside of Canada and the United States, if under the laws of any such jurisdiction, we are considered to be carrying on a trade or business there or earn income that is considered to be sourced there and we do not qualify for an exemption. In jurisdictions where we do not believe we are subject to tax, we can provide no certainty that tax authorities in those jurisdictions will not subject one or more tax years to examination. Tax examinations are often complex as tax authorities may disagree with the treatment of items reported by us, the result of which could have a material adverse effect on our operating results and financial condition.

***Acquisitions, joint ventures or other strategic transactions could disrupt our business, cause dilution to our shareholders and otherwise harm our business.***

We actively evaluate various strategic transactions on an ongoing basis, including the acquisition of other businesses, products or technologies as well as pursuing strategic alliances, joint ventures, licensing transactions or investments in complementary businesses. Any of these transactions could be material to our financial condition and operating results and expose us to many risks, including:

- disruption in our relationships with collaborators or suppliers as a result of such a transaction;
- unanticipated liabilities related to acquired companies;
- difficulties integrating acquired personnel, technologies and operations into our existing business;
- retention of key employees;
- diversion of management time and focus from operating our business to pursuing strategic transactions and managing any such strategic alliances, joint ventures or acquisition integration challenges;
- dilution to our shareholders if we issue equity in connection with such transactions;
- increases in our expenses and reductions in our cash available for operations and other uses; and
- possible write-offs or impairment charges relating to acquired businesses.

Foreign acquisitions involve unique risks in addition to those mentioned above, including those related to integration of operations across different cultures and languages, currency risks and the particular economic, political and regulatory risks associated with specific countries.

Also, the anticipated benefit of any strategic alliance, joint venture or acquisition may not materialize. Future acquisitions or dispositions could result in potentially dilutive issuances of our equity securities, the incurrence of debt, contingent liabilities or amortization expenses or write-offs of goodwill, any of which could harm our financial condition. We cannot predict the number, timing or size of future joint ventures or acquisitions, or the effect that any such transactions might have on our operating results.

**Risks Related to Development, Clinical Testing and Regulatory Approval of Our Product Candidates**

***The regulatory approval processes of the FDA, EMA, Health Canada and regulators in other jurisdictions are lengthy, time-consuming and inherently unpredictable. If we, or our collaborators, are unable to obtain regulatory approval for our product candidates in a timely manner, or at all, our business will be substantially harmed.***

The regulatory approval process is expensive and the time required to obtain approval from the FDA, EMA, Health Canada or other regulatory authorities in other jurisdictions to sell any product is uncertain and may take years. Whether regulatory approval will be granted is unpredictable and depends upon numerous factors, including the substantial discretion of the regulatory authorities. Approval policies, regulations, or the type and amount of pre-clinical and clinical data necessary to gain approval may change during the course of a product candidate's clinical development and may vary among jurisdictions. Moreover, pre-clinical and clinical data are often susceptible to varying interpretations and analyses, and even if the pre-clinical studies show promising results and clinical trials are successfully completed, we cannot guarantee that the FDA, EMA, Health Canada or other regulatory authorities in other jurisdictions will interpret the results as we do, and more trials, manufacturing-related studies or non-clinical studies could be required before we submit our product candidates for approval. Many companies that have believed their product candidates performed satisfactorily in pre-clinical studies and clinical trials have nonetheless failed to obtain marketing approval of their products. To the extent that the results of our studies and trials are not satisfactory to the FDA, EMA, Health Canada or other regulatory authorities in other jurisdictions for support of a marketing application, approval of our product candidates may be significantly delayed, or we may be required to expend significant additional resources, which may not be available to us, to conduct additional trials in support of potential approval of our product candidates. It is also possible that none of our existing product candidates or any of our future product candidates will ever obtain regulatory approval, even if we expend substantial time and resources seeking such approval.

Our product candidates could fail to receive regulatory approval for many reasons, including the following:

- the FDA, EMA, Health Canada or other regulatory authorities may disagree with the design or implementation of our or our collaborators' clinical trials;
- we or our collaborators may be unable to demonstrate to the satisfaction of the FDA, EMA, Health Canada or other regulatory authorities that a product candidate is safe and effective for its proposed indication;
- the results of clinical trials may not meet the level of statistical significance required by the FDA, EMA, Health Canada or other regulatory authorities for approval;

- we, or our collaborators, may be unable to demonstrate that a product candidate's clinical and other benefits outweigh its safety risks;
- the FDA, EMA, Health Canada or other regulatory authorities may disagree with our or our collaborators' interpretation of data from pre-clinical studies or clinical trials;
- the data collected from clinical trials of our product candidates may not be sufficient to support the submission of a New Drug Application, or NDA, or other submission or to obtain regulatory approval in the U.S. or elsewhere;
- the FDA, EMA, Health Canada or other regulatory authorities may fail to approve the manufacturing processes, controls or facilities of third-party manufacturers with which we or our collaborators contract for clinical and commercial supplies; and
- the approval policies or regulations of the FDA, EMA, Health Canada or other regulatory authorities may significantly change in a manner rendering our or our collaborators' clinical data insufficient for approval.

Even if we, or our collaborators, obtain approval for a particular product, regulatory authorities may grant approval contingent on the performance of costly post-approval clinical trials, or may approve a product with a label that does not include the labeling claims necessary or desirable for the successful commercialization of that product.

In addition, because there may be approved treatments for some of the diseases for which we may seek approval, in order to receive regulatory approval, we may need to demonstrate in clinical trials that the product candidates we develop to treat those diseases are not only safe and effective, but may need to be compared to existing products, which may make it more difficult for our product candidates to receive regulatory approval or adequate reimbursement.

***Clinical drug development involves a lengthy and expensive process with uncertain timelines and uncertain outcomes. If clinical trials are prolonged, delayed or not completed, we, or our collaborators, may be unable to commercialize our product candidates on a timely basis.***

Clinical testing of product candidates is expensive and, depending on the stage of development, can take a substantial period of time to complete. Clinical trial outcomes are inherently uncertain, and failure can occur at any time during the clinical development process.

Clinical trials can be halted or delayed for a variety of reasons, including those related to:

- side effects or adverse events in study participants presenting an unacceptable safety risk;
- inability to reach agreement with prospective CROs and clinical trial sites, or the breach of such agreements;
- failure of third-party contractors, such as CROs, or investigators to comply with regulatory requirements, including GCPs;
- delay or failure in obtaining the necessary approvals from regulators or institutional review boards, or IRBs, in order to commence a clinical trial at a prospective trial site, or their suspension or termination of a clinical trial once commenced;
- a requirement to undertake and complete additional pre-clinical studies to generate data required to support the continued clinical development of a product candidate or submission of an NDA;
- inability to enroll sufficient patients to complete a protocol, particularly in orphan diseases;
- difficulty in having patients complete a trial or return for post-treatment follow-up;
- clinical sites deviating from trial protocol or dropping out of a trial;
- problems with drug product or drug substance storage, stability and distribution;
- our inability to add new or additional clinical trial sites;
- our inability to manufacture, or obtain from third parties, adequate supply of drug substance or drug product sufficient to complete our pre-clinical studies and clinical trials; and
- governmental or regulatory delays and changes in regulatory requirements, policy and guidelines.

The results of any Phase 3 or other pivotal clinical trial may not be adequate to support marketing approval. These clinical trials are lengthy and, with respect to non-orphan indications, usually involve many hundreds to thousands of patients. In addition, if the FDA, EMA, Health Canada or another regulator disagrees with our or our collaborator's choice of the key testing criterion, or primary endpoint, the results for the primary endpoint are not robust or significant relative to the control group of patients not receiving the experimental therapy, or our statistical analysis is inconclusive, such regulator may refuse to approve our product candidate in the region in which it has jurisdiction. The FDA, EMA, Health Canada or other regulators also may require additional clinical trials as a condition for approving any of these product candidates.

We could also encounter delays if a clinical trial is suspended or terminated by us, by our collaborators, by the IRBs of the institutions in which such trial is being conducted, by any Data Safety Monitoring Board for such trial, or by the FDA, EMA, Health Canada or other regulatory authorities. Such authorities may impose such a suspension or termination due to a number of factors, including failure to conduct the clinical trial in accordance with regulatory requirements or our clinical protocols, inspection of the clinical trial operations or trial site by the FDA, EMA, Health Canada or other regulatory authorities resulting in the imposition of a clinical hold, product candidate manufacturing problems, unforeseen safety issues or adverse side effects, failure to demonstrate a benefit from using a drug, changes in governmental regulations or administrative actions or lack of adequate funding to continue the clinical trial. In addition, delays can occur due to safety concerns arising from trials or other clinical data regarding another company's product candidate in the same compound class as one of ours.

Additionally, changes in applicable regulatory requirements and guidance may occur and we may need to amend clinical trial protocols to reflect these changes or to include additional objectives that could yield important scientific information critical to our overall development strategy. The protocol amendment process often requires review and approval by several review bodies, including regulatory agencies and scientific, regulatory and ethics boards and IRBs. These protocol amendments may not be accepted by the review bodies in the form submitted, or at all, which may impact costs, timing or successful completion of a clinical trial.

If we or our collaborators experience delays in the completion of, or termination of, any clinical trial of one of our product candidates, the commercial prospects of the product candidate will be harmed, could shorten the period during which we may have the exclusive right to commercialize our products under patent protection, and our or our collaborators' ability to commence product sales and generate product revenue from the product will be delayed. In addition, any delays in completing our clinical trials will increase our costs and slow down our product candidate development and approval process. Any of these occurrences may harm our business, financial condition and prospects significantly. In addition, many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials may also ultimately lead to the denial of regulatory approval of our product candidates.

XEN496 targets an ultra-orphan indication of KCNQ2-DEE and the FDA has indicated that a single, small pivotal trial may be sufficient to demonstrate effectiveness and safety in KCNQ2-DEE provided that no new or unexpected safety issues arise during drug development. However, other regulatory authorities may require additional data. Further, even though we believe the safety and efficacy profile of ezogabine, the active ingredient in XEN496, in pediatric patients with KCNQ2-DEE generated to date by others appears promising based on published clinical case reports, we do not yet know if the pediatric-specific formulation of XEN496 will have the same or similar safety, pharmacokinetic and/or efficacy profile in pediatric patients with KCNQ2-DEE as the original formulation of ezogabine. If we are unable to replicate the published clinical case reports, due to the new formulation or any other factors, the clinical development of XEN496 may not be successful and the FDA or other regulatory authorities may require additional data in more patients or we may not be able to generate sufficient data for approval in this patient population.

***Clinical trials may fail to demonstrate adequately the safety and efficacy of our or our collaborators' product candidates, which could prevent or delay regulatory approval and commercialization.***

Before obtaining regulatory approvals for the commercial sale of our products, we or our collaborators must demonstrate through lengthy, complex and expensive pre-clinical testing and clinical trials that the product candidate is both safe and effective for use in each target indication. Clinical trials often fail to demonstrate safety and efficacy of the product candidate studied for the target indication. Most product candidates that commence clinical trials are never approved as products.

In the case of some of our and our collaborators' product candidates, we and our collaborators are seeking to develop treatments for diseases for which there is relatively limited clinical experience, and clinical trials may use novel endpoints and measurement methodologies or subjective patient feedback, which adds a layer of complexity to these clinical trials and may delay regulatory approval. In addition, our focus on orphan and niche markets may cause us to select target indications that are in more challenging therapeutic areas. Related to our collaboration with Genentech and our agreement with Flexion, clinical trials for pain are inherently difficult to conduct. The primary measure of pain is based on subjective patient feedback, which can be influenced by factors outside of our control and can vary widely from day to day for a particular patient, from patient to patient, and from site to site within a clinical study. The placebo effect also tends to have a more significant impact in pain trials.

If our or our collaborators' product candidates are not shown to be both safe and effective in clinical trials, such product candidates will be unable to obtain regulatory approval or be successfully commercialized. In such case, we would need to develop other compounds and conduct associated pre-clinical testing and clinical trials, as well as potentially seek additional financing, all of which would have a material adverse effect on our business, growth prospects, operating results, financial condition and results of operations.

***We or our collaborators may find it difficult to enroll patients in our clinical studies, including for ultra-orphan, orphan or niche indications, which could delay or prevent clinical studies of our product candidates.***

We or our collaborators may not be able to identify, recruit and enroll a sufficient number of patients, or those with required or desired characteristics to achieve diversity in a study, to complete clinical studies in a timely manner, or at all. Patient enrollment for clinical trials for ultra-orphan, orphan and niche indications and for more prevalent conditions is affected by factors including:

- severity of the disease under investigation;
- design of the study protocol;
- size of the patient population;
- eligibility criteria for the study in question;
- perceived risks and benefits of the product candidate under study;
- proximity and availability of clinical study sites for prospective patients;
- availability of competing therapies and clinical studies;
- efforts to facilitate timely enrollment in clinical studies; and
- patient referral practices of physicians.

The limited patient populations in ultra-orphan, orphan and niche indications, such as KCNQ2-DEE, SCN8A-DEE, other early infantile epileptic encephalopathies, or EIEEs, alternating hemiplegia of childhood, or AHC, and hemiplegic migraine, or HM, present significant recruitment challenges for clinical trials and a full understanding of the size of these populations is still relatively unknown. Many of these patients may not be suitable or available to participate in our or our collaborators' clinical trials. This means that we or our collaborators will generally have to run multi-site and potentially multi-national trials, which can be expensive and require close coordination and supervision. If we or our collaborators' experience delays in completing our clinical trials, such delays could result in increased costs, delays in advancing our product development, delays in testing the effectiveness of our product candidates or termination of the clinical studies altogether. Even if we or our collaborators' are successful in receiving regulatory approval, the limited patient populations in ultra-orphan, orphan and niche indications may impact the successful commercialization of our or our collaborators' product candidates and reimbursement rates, which could impact revenue and our ability to achieve profitability.

***The FDA has not yet approved any drug products specifically for AHC, KCNQ2-DEE or SCN8A-DEE, and the clinical endpoints required to obtain approval are not well defined.***

Given the nature of some of the rare diseases we and our collaborators are seeking to treat, we or our collaborators may have to devise novel clinical endpoints to be tested in studies, which can lead to some subjectivity in interpreting study results and could result in regulatory agencies not agreeing with the validity or the adequacy of the chosen endpoints, or our or our collaborators' interpretation of the clinical data, and therefore denying approval. Negotiating the appropriate endpoints to use with FDA or similar regulators may be costly and time-consuming, and may delay clinical trials. In post-Phase 1 trials, given the illness of the subjects in our and our collaborators' studies and the nature of the subjects' rare diseases, we or our collaborators may also be required or choose to conduct certain studies on an open-label basis. Additionally, we or our collaborators may elect to review interim clinical data at multiple time points during the studies, which could introduce bias into the study results, or result in statistical penalties being applied to the data, and potentially result in denial of approval.

***If we fail to obtain or maintain orphan drug designation or other regulatory exclusivity for some of our product candidates, our competitive position would be harmed.***

Although we may file intellectual property to protect XEN007 and additional intellectual property to protect XEN496, these product candidates are not currently covered by any issued patents and we may have to rely solely on orphan drug designation to gain market exclusivity for these product candidates. Currently, this designation provides market exclusivity in the U.S. and the EU for seven years and ten years, respectively, if a product is the first such product approved for such orphan indication. This market exclusivity does not, however, pertain to indications other than those for which the drug was specifically designated in the approval, nor does it prevent other types of drugs from receiving orphan designations or approvals in these same indications. Further, even after an orphan drug is approved, the FDA can subsequently approve a drug with similar chemical structure for the same condition if the FDA concludes that the new drug is clinically superior to the orphan product or a market shortage occurs.

In the EU, orphan exclusivity may be reduced to six years if the drug no longer satisfies the original designation criteria or can be lost altogether if the marketing authorization holder consents to a second orphan drug application or cannot supply enough drug, or when a second applicant demonstrates its drug is "clinically superior" to the original orphan drug. XEN007, a drug we are evaluating for potential development in HM or AHC, has received orphan drug designation from the FDA for each indication. We have also received orphan drug designation from the FDA for XEN496, a drug we intend to begin Phase 3 development for the treatment of KCNQ2-DEE in 2020. If we seek orphan drug designations for other indications or in other jurisdictions, we may fail to receive such orphan drug designations and, even if we succeed, such orphan drug designations may fail to result in or maintain orphan drug exclusivity upon approval, which would harm our competitive position. Further, not all jurisdictions, such as Canada, have orphan drug designations. Neither orphan drug designation, nor rare pediatric disease, or RPD, designation gives the drug any advantage in the regulatory review or approval process.

***Although the FDA has granted RPD designation to XEN007 for the treatment of AHC, we may not be able to realize any value from such designation.***

Our product candidate XEN007 has received RPD designation from the FDA for the treatment of AHC. The FDA defines a "rare pediatric disease" as a disease that affects fewer than 200,000 individuals in the U.S. primarily under the age of 18 years old. Under the FDA's RPD priority review voucher program, upon the approval of a new drug application, NDA, or a biologics license application, BLA, for the treatment of an RPD, the sponsor of such application would be eligible for a priority review voucher that can be used to obtain priority review for a subsequent NDA or BLA. There is no assurance we will receive a RPD priority review voucher or that use of the priority review voucher will result in a faster review or approval for a subsequent marketing application. It is possible that even if we obtain approval for XEN007 and qualify for such a priority review voucher, the program may no longer be in effect at the time of XEN007 approval. Also, although priority review vouchers may be freely sold or transferred to third parties, there is no guarantee that we will be able to realize any value if we were to sell a priority review voucher to a third party. We may not be able to receive approval of an NDA for XEN007 for AHC prior to October 1, 2022 after which Congress must further reauthorize the program for priority review vouchers. RPD Designation does not lead to faster development or regulatory review of the product, or increase the likelihood that it will receive marketing approval.

***Results of pre-clinical studies and/or earlier clinical trials may not be predictive of the results of later clinical trials and the results of our clinical trials may not satisfy the requirements of the FDA, EMA, Health Canada or foreign regulatory authorities.***

The results of pre-clinical studies, either generated by us, such as for XEN901 (which we licensed to Neurocrine Biosciences and is now known as NBI-921352) or XEN402 (which we sold to Flexion and is now known as FX301), or by our CROs or by other third parties from which we have in-licensed or acquired a product candidate, such as for XEN1101, may not be predictive of results in clinical testing. Moreover, pre-clinical results can often be difficult to compare across different studies for a variety of reasons, including differences in experimental protocols and techniques, personnel, equipment and other factors, which may make the pre-clinical results less reliable and predictive of clinical trial results. In addition, published clinical data or case reports from third parties or early clinical trial data of our product candidates may not be predictive of the results of later-stage clinical trials. Interpretation of results from early, usually smaller, studies that suggest a clinically meaningful response in some patients, requires caution. Results from later stages of clinical trials enrolling more patients may fail to show the desired safety and efficacy results or otherwise fail to be consistent with the results of earlier trials of the same product candidate. Later clinical trial results may not replicate earlier clinical trials for a variety of reasons, including differences in trial design, different trial endpoints (or lack of trial endpoints in exploratory studies), patient population, number of patients, patient selection criteria, trial duration, drug dosage and formulation and lack of statistical power in the earlier studies. These uncertainties are enhanced where the diseases under study lack established clinical endpoints, validated measures of efficacy, as is often the case with orphan diseases for which no drugs have been developed previously and where the product candidates target novel mechanisms. For example, to our knowledge, NBI-921352 is the first selective Nav1.6 sodium channel inhibitor being developed for the treatment of epilepsy and therefore standard pre-clinical models may not be predictive of clinical efficacy due to its novel molecular mechanism.

Further, our product candidates may not be approved even if they achieve their primary endpoint in our Phase 3 clinical trials. The FDA, EMA, Health Canada or foreign regulatory authorities may disagree with our trial design and our interpretation of data from pre-clinical studies and clinical trials. In addition, any of these regulatory authorities may change its requirements for the approval of a product candidate even after reviewing and providing comments or advice on a protocol for a pivotal clinical trial that, if successful, would potentially form the basis for an application for approval by the FDA, EMA, Health Canada or another regulatory authority. Furthermore, any of these regulatory authorities may also approve our product candidates for a narrower indication than we request or may grant approval contingent on the performance of costly post-marketing clinical trials.

***Changes in methods of product candidate manufacturing or formulation may result in additional costs or delay.***

As product candidates are developed through pre-clinical to late stage clinical trials towards approval and commercialization, it is common that various aspects of the development program, such as manufacturing methods and formulations, are altered along the way in an effort to optimize products, processes and results, to extend patent protection and/or to target different populations. For example, XEN496 is a pediatric-specific formulation of ezogabine and we have also developed a pediatric formulation for NBI-921352 that was included in the license to Neurocrine Biosciences. Any of these changes could cause our product candidates to perform differently and not provide the same drug exposure profile in children and/or cause side effects different to those observed with formulations previously tested in adults. Unexpected changes in the performance of a new formulation may affect the results of planned clinical trials or other future clinical trials conducted with the altered materials. This could delay completion of clinical trials, require the conduct of bridging clinical trials or the repetition of one or more clinical trials, increase clinical trial costs and/or delay or jeopardize approval of our product candidates and/or jeopardize our or our collaborators' ability to commence product sales and generate revenue.

***Even if we obtain and maintain approval for our product candidates from one jurisdiction, we may never obtain approval for our product candidates in other jurisdictions, which would limit our market opportunities and adversely affect our business.***

Sales of our approved products, if any, will be subject to the regulatory requirements governing marketing approval in the countries in which we obtain regulatory approval, and we plan to seek regulatory approval to commercialize our product candidates in North America, the EU and in additional foreign countries. Clinical trials conducted in one country may not be accepted by regulatory authorities in other countries and regulatory approval in one country does not ensure approval in any other country, while a failure or delay in obtaining regulatory approval in one country may have a negative effect on the regulatory approval process in others. For example, approval in the U.S. by the FDA does not ensure approval by regulatory authorities in other countries or jurisdictions, and approval by one foreign regulatory authority does not ensure approval by the FDA, EMA, Health Canada or regulatory authorities in other countries. Approval procedures vary among jurisdictions and can be lengthy and expensive, and involve requirements and administrative review periods different from, and greater than, those in the U.S., including additional pre-clinical studies or clinical trials. Even if our product candidates are approved, regulatory approval for any product may be withdrawn by the regulatory authorities in a particular jurisdiction.

Even if a product is approved, the FDA, EMA, Health Canada, or another applicable regulatory authority, as the case may be, may limit the indications for which the product may be marketed, require extensive warnings on the product labeling or require expensive and time-consuming clinical trials or reporting as conditions of approval. In many countries outside the U.S., a product candidate must be approved for reimbursement before it can be approved for sale in that country. In some cases, the price that we intend to charge for a product is also subject to approval.

Regulatory authorities in countries outside of the U.S., Canada and the EU also have their own requirements for approval of product candidates with which we must comply prior to marketing in those countries. Obtaining foreign regulatory approvals and compliance with such foreign regulatory requirements could result in significant delays, difficulties and costs for us and could delay or prevent the introduction of our current and any future products, in certain countries.

If we fail to receive applicable marketing approvals or comply with the regulatory requirements in international markets, our target market will be reduced and our ability to realize the full market potential of our product candidates will be harmed and our business will be adversely affected.

***We work with outside scientists and their institutions in executing our business strategy of developing product candidates. These scientists may have other commitments or conflicts of interest, which could limit our access to their expertise and harm our ability to develop viable product candidates.***

We work with scientific advisors and collaborators at academic institutions and other research institutions. These scientists and collaborators are not our employees; rather, they serve as either independent contractors or the primary investigators under research collaboration agreements that we have with their sponsoring academic or research institution. Such scientists and collaborators may have other commitments that would limit their availability to us. Although our scientific advisors generally agree not to do competing work, if an actual or potential conflict of interest between their work for us and their work for another entity arises, we may lose their services. It is also possible that some of our valuable proprietary knowledge may become publicly known through these scientific advisors if they breach their confidentiality agreements with us, which would cause competitive harm to our business.

#### **Risks Related to Commercialization**

***If, in the future, we are unable to establish our own sales, marketing and distribution capabilities or enter into licensing or collaboration agreements for these purposes, we may not be successful in independently commercializing any future products.***

We do not have a sales or marketing infrastructure and, as a company, have no sales, marketing or distribution experience. Our strategy involves, in part, building our own commercial infrastructure to selectively commercialize future products in niche or orphan indications in certain commercial markets. If we enter into licensing or collaboration agreements, we may seek to retain the right to participate in the future development and commercialization of such products if we believe such involvement would advance our business.

To develop internal sales, distribution and marketing capabilities, we will have to invest significant amounts of financial and management resources, some of which will need to be committed prior to any confirmation that any of our product candidates will be approved. For any future products for which we decide to perform sales, marketing and distribution functions ourselves, we could face a number of additional risks, including:

- the maintenance of existing or the establishment of new supply arrangements with third-party drug product suppliers and manufacturers;
- the maintenance of existing or the establishment of new scaled production arrangements with third-party manufacturers to obtain finished products that are appropriately packaged for sale;
- a continued acceptable safety profile following any marketing approval;
- our inability to recruit and retain adequate numbers of qualified sales and marketing personnel or develop alternative sales channels;
- the inability of our products to secure acceptance from physicians, healthcare providers, patients, third-party payors and the medical community including identifying an adequate number of physicians and patients, especially for ultra-orphan, orphan or niche indications;
- the lack of complementary products to be offered by sales personnel, which may put us at a competitive disadvantage relative to companies with more extensive product lines;
- unforeseen costs and expenses associated with creating and maintaining an independent sales and marketing organization; and
- our ability to compete with other therapies.

Where and when appropriate, we may elect to utilize contract sales forces or distribution partners to assist in the commercialization of our product candidates. If we enter into arrangements with third parties to perform sales, marketing and distribution services for a product, the resulting revenue or the profitability from this revenue to us is likely to be lower than if we had sold, marketed and distributed that product ourselves. In addition, we may not be successful in entering into arrangements with third parties to sell, market, and distribute our product candidates or may be unable to do so on terms that are favorable to us. We likely will have little control over such third parties, and any of these third parties may fail to devote the necessary resources and attention to sell, market, and distribute our current or any future products effectively.

***Even if we receive regulatory approval to commercialize any of the product candidates that we develop independently, we will be subject to ongoing regulatory obligations and continued regulatory review, which may result in significant additional expense.***

Any regulatory approvals that we receive for our product candidates we commercialize will be subject to limitations on the approved indicated uses for which the product may be marketed or subject to certain conditions of approval and may contain requirements for potentially costly post-approval trials, including Phase 4 clinical trials, and surveillance to monitor the safety and efficacy of the marketed product.

For any approved product, we will need to ensure continued compliance with extensive regulations and requirements regarding the manufacturing processes, labeling, packaging, distribution, adverse event reporting, storage, advertising, promotion and recordkeeping for the product. These requirements include submissions of safety and other post-approval information and reports, as well as continued compliance with current good manufacturing practices, or cGMP, and current good clinical practices, or cGCP, for any clinical trials that we or our collaborators are required to conduct post-approval. Later discovery of previously unknown problems with a product, including adverse events of unanticipated severity or frequency, or with third-party manufacturers or manufacturing processes, or failure to comply with regulatory requirements, may result in, among other things:

- restrictions on the marketing or manufacturing of the product, withdrawal of the product from the market or voluntary or mandatory product recalls;
- fines, warning letters or holds on any post-approval clinical trials;
- refusal by the FDA, EMA, Health Canada or another applicable regulatory authority to approve pending applications or supplements to approved applications filed by us or our collaborators, or suspension or revocation of product license approvals;
- product seizure or detention, or refusal to permit the import or export of products; and
- injunctions or the imposition of civil or criminal penalties.

Occurrence of any of the foregoing could have a material and adverse effect on our business and results of operations.

In addition, prescription drugs may be promoted only for the approved indications in accordance with the approved label. The FDA and other agencies actively enforce the laws and regulations prohibiting the promotion of off-label uses, and a company that is found to have improperly promoted off-label may be subject to significant liability. However, physicians may, in their independent medical judgment, prescribe legally available products for off-label uses. The FDA does not regulate the behavior of physicians in their choice of treatments but the FDA and other foreign regulators do restrict manufacturer's communications on the subject of off-label use of their products.

***If the market opportunities for our product candidates are smaller than we believe they are, our revenue may be adversely affected, and our business may suffer. Because the target patient populations for some of our product candidates are small, we must be able to successfully identify patients and acquire a significant market share to achieve profitability and growth.***

Some of our product candidates focus on treatments for rare and ultra-rare diseases. Given the small number of patients who have some of the diseases that we are targeting, our profitability and growth depend on successfully identifying patients with these rare and ultra-rare diseases. Currently, most reported estimates of the prevalence of these diseases are based on studies of small subsets of the population in specific geographic areas, which are then extrapolated to estimate the prevalence of the diseases in the U.S. or elsewhere. Our projections of both the number of people who have these diseases, as well as the subset of people with these diseases who have the potential to benefit from treatment with our product candidates, are based on our internal estimates. These estimates have been derived from a variety of sources, including scientific literature, surveys of clinics, patient foundations, and market research, and may prove to be incorrect. Further, new studies may change the estimated incidence or prevalence of these diseases, and, as a result, the number of patients with these diseases may turn out to be lower than expected. Our effort to identify patients with diseases we seek to treat is in early stages, and we cannot accurately predict the number of patients for whom treatment might be possible. Additionally, the potentially addressable patient population for each of our product candidates may be limited or may not be amenable to treatment with our product candidates, and new patients may become increasingly difficult to identify or gain access to, which would adversely affect our results of operations and our business. Finally, even if we obtain significant market share for our product candidates, because the potential target populations are very small, we may never achieve profitability despite obtaining such significant market share.

***Even if we or our collaborators receive approval to commercialize our products, unfavorable pricing regulations and challenging third-party coverage and reimbursement practices could harm our business.***

Our or any collaborators' ability to commercialize any products successfully will depend, in part, on the extent to which coverage and reimbursement for these products and related treatments will be available from government healthcare programs, private health insurers, managed care plans, and other organizations. Government authorities and third-party payers, such as private health insurers and health maintenance organizations, decide which medications they will pay for and establish reimbursement levels. A primary trend in the U.S. healthcare industry is cost containment. Government authorities and third-party payers have attempted to control costs by limiting coverage and the amount of reimbursement for particular medications. Increasingly, third-party payers are requiring that drug companies provide them with predetermined discounts from list prices and are challenging the prices charged for medical products. We cannot be sure that coverage and reimbursement will be available for any product that we or any collaborator commercialize and, if reimbursement is available, the level of reimbursement. In addition, coverage and reimbursement may impact the demand for, or the price of, any product candidate for which we or a collaborator obtains marketing approval. If coverage and reimbursement are not available or reimbursement is available only to limited levels, we or our collaborators may not be able to successfully commercialize any product candidate for which marketing approval is obtained.

There may be significant delays in obtaining coverage and reimbursement for newly approved drugs, and coverage may be more limited than the purposes for which the drug is approved by the FDA, EMA, Health Canada or other regulatory authorities. Moreover, eligibility for coverage and reimbursement does not imply that a drug will be paid for in all cases or at a rate that covers our costs, including research, development, manufacture, sale and distribution expenses. Interim reimbursement levels for new drugs, if applicable, may also be insufficient to cover our and any collaborator's costs and may not be made permanent. Reimbursement rates may vary according to the use of the drug and the clinical setting in which it is used, may be based on reimbursement levels already set for lower cost drugs and may be incorporated into existing payments for other services. Net prices for drugs may be reduced by mandatory discounts or rebates required by government healthcare programs or private payers and by any future relaxation of laws that presently restrict imports of drugs from countries where they may be sold at lower prices than in the U.S. Third-party payers often rely upon Medicare coverage policy and payment limitations in setting their own reimbursement policies. Our or any collaborator's inability to promptly obtain coverage and profitable payment rates from both government-funded and private payers for any approved products that we or our collaborators develop could have a material adverse effect on our operating results, our ability to raise capital needed to commercialize products and our overall financial condition.

Our and our collaborators' target patient populations in orphan and niche indications, such as KCNQ2-DEE, and SCN8A-DEE, and other potential target patient populations, such as AHC, are relatively small. In order for therapies that are designed to treat smaller patient populations to be commercially viable, the pricing, coverage and reimbursement for such therapies needs to be higher, on a relative basis, to account for the lack of volume. Accordingly, we will need to implement pricing, coverage and reimbursement strategies for any approved product that accounts for the smaller potential market size. If we are unable to establish or sustain coverage and adequate reimbursement for our current and any future products from third party payers or the government, the adoption of those products and sales revenue will be adversely affected, which, in turn, could adversely affect the ability to market or sell those products.

***Recently enacted and future legislation may increase the difficulty and cost for us to commercialize any products that we or our collaborators develop and affect the prices we may obtain.***

The U.S. and some foreign jurisdictions are considering or have enacted a number of legislative and regulatory proposals to change the healthcare system in ways that could affect our ability to sell any of our products profitably, once such products are approved for sale. Among policy makers and payers in the U.S. and elsewhere, there is significant interest in promoting changes in healthcare systems with the stated goals of containing healthcare costs, improving quality and/or expanding access. In the U.S., the pharmaceutical industry has been a particular focus of these efforts and has been significantly affected by major legislative initiatives.

For example, in 2010, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, collectively, the PPACA, was enacted and includes measures that have significantly changed the way healthcare is financed by both governmental and private insurers. The Trump administration and Congress, through legislation, executive orders and other measures, has taken action to repeal and replace certain provisions of the PPACA and a recent court decision has called into question the enforceability of the PPACA. It is unclear how this decision, future decisions, subsequent appeals, and other efforts to repeal and replace the PPACA will impact the PPACA and our business.

In addition, there has been heightened governmental scrutiny over the manner in which manufacturers set prices for their marketed products, which has resulted in several Congressional inquiries and proposed and enacted federal and state legislation designed to, among other things, bring more transparency to product pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for pharmaceutical products. At the federal level, the Trump administration has continued to pursue additional drug price control measures that could be enacted during the budget process or in other future legislation. Congress and the Trump administration have each indicated that it will continue to seek new legislative and/or administrative measures to control drug costs. At the state level, legislatures have increasingly passed legislation and implemented regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures, and, in some cases, designed to encourage importation from other countries and bulk purchasing. These and other health reform measures that are implemented may have a material adverse effect on our operations.

In the EU, similar political, economic and regulatory developments may affect our ability to profitably commercialize our current or any future products. In addition to continuing pressure on prices and cost containment measures, legislative developments at the EU or member state level may result in significant additional requirements or obstacles that may increase our operating costs. In international markets, reimbursement and healthcare payment systems vary significantly by country, and many countries have instituted price ceilings on specific products and therapies. Our future products, if any, might not be considered medically reasonable and necessary for a specific indication or cost-effective by third-party payers. An adequate level of reimbursement might not be available for such products and third-party payers' reimbursement policies might adversely affect our or our collaborators' ability to sell any future products profitably.

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

We cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative action, either in the U.S. or in other jurisdictions. If we or our collaborators are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we or our collaborators are not able to maintain regulatory compliance, our product candidates may lose any marketing approval that may have been obtained and we may not achieve or sustain profitability, which would adversely affect our business.

***Foreign governments tend to impose strict price controls, which may adversely affect our future profitability.***

In most foreign countries, particularly those in the EU and Canada, prescription drug pricing and/or reimbursement is subject to governmental control. In those countries that impose price controls, pricing negotiations with governmental authorities can take considerable time after the receipt of marketing approval for a product. To obtain reimbursement or pricing approval in some countries, we or our collaborators may be required to conduct a clinical trial that compares the cost-effectiveness of our product candidate to other available therapies.

Some countries require approval of the sale price of a drug before it can be marketed. In many countries, the pricing review period begins after marketing or product licensing approval is granted. In some foreign markets, prescription pharmaceutical pricing remains subject to continuing governmental control even after initial approval is granted. As a result, we or our collaborators might obtain marketing approval for a product in a particular country, but then be subject to price regulations that delay commercial launch of the product, possibly for lengthy time periods, and negatively impact the revenue that is generated from the sale of the product in that country. If reimbursement of such products is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, or if there is competition from lower priced cross-border sales, our profitability will be negatively affected.

**Risks Related to Our Dependence on Third Parties**

***Our prospects for successful development and commercialization of our partnered products and product candidates are dependent upon the research, development and marketing efforts of our collaborators.***

We have no control over the resources, time and effort that our collaborators may devote to our programs and limited access to information regarding or resulting from such programs. We are dependent on our collaborators, including Neurocrine Biosciences, Flexion, Genentech and Merck, to fund and conduct the research and any clinical development of product candidates under our agreements with each of them, and for the successful regulatory approval, marketing and commercialization of one or more of such products or product candidates. Such success will be subject to significant uncertainty.

Our ability to recognize revenue from successful collaborations may be impaired by multiple factors including:

- a collaborator may shift its priorities and resources away from our programs due to a change in business strategies, or a merger, acquisition, sale or downsizing of its company or business unit;
- a collaborator may cease development in therapeutic areas which are the subject of our strategic alliances;
- a collaborator may change the success criteria for a particular program or product candidate thereby delaying or ceasing development of such program or candidate;
- a significant delay in initiation of certain development activities by a collaborator will also delay payment of milestones tied to such activities, thereby impacting our ability to fund our own activities;
- a collaborator could develop a product that competes, either directly or indirectly, with our current or future products, if any;
- a collaborator with commercialization obligations may not commit sufficient financial or human resources to the marketing, distribution or sale of a product;
- a collaborator with manufacturing responsibilities may encounter regulatory, resource or quality issues and be unable to meet demand requirements;
- a collaborator may exercise its rights under the agreement to terminate our collaboration;
- a dispute may arise between us and a collaborator concerning the research or development of a product candidate, commercialization of a product or payment of royalties or milestone payments, any of which could result in a delay in milestones, royalty payments or termination of a program and possibly resulting in costly litigation or arbitration which may divert management attention and resources;
- a collaborator may not adequately protect the intellectual property rights associated with a product or product candidate; and
- a collaborator may use our proprietary information or intellectual property in such a way as to invite litigation from a third party.

If our collaborators do not perform in the manner we expect or fulfill their responsibilities in a timely manner, or at all, the clinical development, regulatory approval and commercialization efforts could be delayed, terminated or be commercially unsuccessful. Conflicts between us and our collaborators may arise. In the event of termination of one or more of our collaboration agreements, it may become necessary for us to assume the responsibility of any terminated product or product candidates at our own expense or seek new collaborators. In that event, we would likely be required to limit the size and scope of one or more of our independent programs or increase our expenditures and seek additional funding which may not be available on acceptable terms or at all, and our business would be materially and adversely affected.

***We depend on our collaborative relationship with Neurocrine Biosciences to further develop and commercialize NBI-921352, and if our relationship is not successful or is terminated, we may not be able to effectively develop and/or commercialize NBI-921352, which could have a material adverse effect on our business.***

We depend on Neurocrine Biosciences to collaborate with us to develop and commercialize NBI-921352. Under the agreement and subject to input from the joint steering committee, Neurocrine Biosciences controls all decision-making with respect to the clinical development and commercialization for NBI-921352.

As a result of our collaboration with Neurocrine Biosciences, the eventual success or commercial viability of NBI-921352 is largely beyond our control. The financial returns to us, if any, depend in large part on the achievement of development and commercialization milestones, plus a share of any revenue from sales. Therefore, our success, and any associated financial returns to us and our investors, will depend in part on Neurocrine Biosciences' performance under the agreement.

We are subject to a number of additional specific risks associated with our dependence on our collaborative relationship with Neurocrine Biosciences, including:

- adverse decisions by Neurocrine Biosciences regarding the development and commercialization of NBI-921352;
- possible disagreements as to the timing, nature and extent of development plans, including clinical trials or regulatory approval strategy;
- loss of significant rights if we fail to meet our obligations under the agreement;

- changes in key management personnel at Neurocrine Biosciences, including in members of the joint steering committee; and
- possible disagreements with Neurocrine Biosciences regarding the agreement, for example, with regard to ownership of intellectual property rights.

If either we or Neurocrine Biosciences fail to perform our respective obligations, any clinical trial, regulatory approval or development progress could be significantly delayed or halted, could result in costly or time-consuming litigation or arbitration and could have a material adverse effect on our business.

Decisions by Neurocrine Biosciences to emphasize other drug candidates currently in its portfolio ahead of our product candidates, or to add competitive agents to its portfolio could result in a decision to terminate the agreement, in which event, among other things, we may be responsible for paying any remaining costs of all ongoing or future clinical trials.

Any of the above discussed scenarios could adversely affect the timing and extent of the development and commercialization activities related to NBI-921352, which could materially and adversely impact our business.

***We may not be successful in establishing new collaborations or maintaining our existing alliances, which could adversely affect our ability to develop future product candidates and commercialize future products.***

In the ordinary course, we engage with other biotechnology and pharmaceutical companies to discuss potential in-licensing, out-licensing, alliances and other strategic transactions. We may seek to enter into these types of transactions to enhance and accelerate the development of our future product candidates and the commercialization of any resulting products. We face significant competition in seeking appropriate collaborators and the negotiation process is time-consuming and complex. Moreover, we may not be successful in our efforts to establish other collaborations or other alternative arrangements for any future product candidates because our research and development pipeline may be insufficient, our product candidates may be deemed to be at too early of a stage of development for collaboration effort and/or third parties may view our product candidates as lacking the requisite potential to demonstrate safety and efficacy. Even if we are successful in our efforts to establish collaborations, the terms that we agree upon may not be favorable to us and we may not be able to maintain such collaborations if, for example, development or approval of a product candidate is delayed or sales of an approved product are disappointing.

If any of our existing collaboration agreements is terminated, or if we determine that entering into other product collaborations is in our best interest but we either fail to enter into, delay in entering into or fail to maintain such collaborations:

- the development of certain of our current or future product candidates may be terminated or delayed;
- our cash expenditures related to development of our product candidates would increase significantly and we may need to seek additional financing sooner than expected;
- we may be required to hire additional employees or otherwise develop expertise, such as clinical, regulatory, sales and marketing expertise, some of which we do not currently have;
- we will bear all of the risk related to the development of any such product candidates; and
- the competitiveness of any product that is commercialized could be reduced.

***We intend to rely on third-party manufacturers to produce our clinical product candidate supplies. Any failure by a third-party manufacturer to produce acceptable supplies for us may delay or impair our ability to initiate or complete our clinical trials or commercialize approved products.***

We do not currently own or operate any manufacturing facilities nor do we have significant in-house manufacturing experience or personnel. We rely on our collaborators to manufacture product candidates licensed to them or work with multiple CMOs to produce sufficient quantities of materials required for the manufacture of our product candidates for pre-clinical testing and clinical trials and intend to do so for the commercial manufacture of our products. If we are unable to arrange for such third-party manufacturing sources, or fail to do so on commercially reasonable terms, we may not be able to successfully produce sufficient supply of product candidate or we may be delayed in doing so. Such failure or substantial delay could materially harm our business.

Reliance on third-party manufacturers entails risks to which we would not be subject if we manufactured product candidates ourselves, including reliance on the third party for regulatory compliance and quality control and assurance, volume production, the possibility of breach of the manufacturing agreement by the third party because of factors beyond our control (including a failure to synthesize and manufacture our product candidates in accordance with our product specifications) and the possibility of termination or nonrenewal of the agreement by the third party at a time that is costly or damaging to us. In addition, the FDA, EMA, Health Canada and other regulatory authorities require that our product candidates be manufactured according to cGMP and similar foreign standards. Pharmaceutical manufacturers and their subcontractors are required to register their facilities and/or products manufactured at the time of submission of the marketing application and then annually thereafter with the FDA, EMA, Health Canada and other regulatory agencies. They are also subject to periodic unannounced inspections by the FDA, EMA, Health Canada and other regulatory agencies. Any subsequent discovery of problems with a product, or a manufacturing or laboratory facility used by us or our collaborators, may result in restrictions on the product or on the manufacturing or laboratory facility, including product recall, suspension of manufacturing, product seizure or a voluntary withdrawal of the drug from the market. Any failure by our third-party manufacturers to comply with cGMP or any failure to deliver sufficient quantities of product candidates in a timely manner, could lead to a delay in, or failure to obtain, regulatory approval of any of our product candidates.

***We rely on third parties to monitor, support, conduct, and/or oversee pre-clinical studies and clinical trials of the product candidates that we are developing independently and, in some cases, to maintain regulatory files for those product candidates. We may not be able to obtain regulatory approval for our product candidates or commercialize any products that may result from our development efforts, if we are not able to maintain or secure agreements with such third parties on acceptable terms, if these third parties do not perform their services as required, or if these third parties fail to timely transfer any regulatory information held by them to us.***

We rely on entities outside of our control, which may include academic institutions, CROs, hospitals, clinics and other third-party collaborators, to monitor, support, conduct and/or oversee pre-clinical and clinical studies of our current and future product candidates. As a result, we have less control over the timing and cost of these studies and the ability to recruit trial subjects than if we conducted these trials with our own personnel.

If we are unable to maintain or enter into agreements with these third parties on acceptable terms, or if any such engagement is terminated prematurely, we may be unable to enroll patients on a timely basis or otherwise conduct our trials in the manner we anticipate. In addition, there is no guarantee that these third parties will devote adequate time and resources to our studies or perform as required by our contract or in accordance with regulatory requirements, including maintenance of clinical trial information regarding our product candidates. If these third parties fail to meet expected deadlines, fail to transfer to us any regulatory information in a timely manner, fail to adhere to protocols or fail to act in accordance with regulatory requirements or our agreements with them, or if they otherwise perform in a substandard manner or in a way that compromises the quality or accuracy of their activities or the data they obtain, then clinical trials of our future product candidates may be extended or delayed with additional costs incurred, or our data may be rejected by the FDA, EMA, Health Canada or other regulatory agencies.

Ultimately, we are responsible for ensuring that each of our clinical trials is conducted in accordance with the applicable protocol, legal, regulatory and scientific standards, and our reliance on third parties does not relieve us of our regulatory responsibilities.

We and our CROs are required to comply with current good laboratory practices, or cGLP, cGCP and cGMP regulations and guidelines enforced by the FDA, Health Canada, the competent authorities of the member states of the European Economic Area and comparable foreign regulatory authorities for products in clinical development. Regulatory authorities enforce these regulations through periodic inspections of clinical trial sponsors, principal investigators, clinical trial sites, manufacturing facilities, nonclinical testing facilities and other contractors. If we or any of our CROs fail to comply with these applicable regulations, the clinical data generated in our nonclinical studies and clinical trials may be deemed unreliable and our submission of marketing applications may be delayed or the FDA, EMA, Health Canada or another regulatory authority may require us to perform additional clinical trials before approving our marketing applications. Upon inspection, the FDA, EMA, Health Canada or another regulatory authority could determine that any of our clinical trials fail or have failed to comply with applicable cGCP regulations. In addition, our clinical trials must be conducted with product produced under the cGMP regulations enforced by the FDA, EMA, Health Canada and other regulatory authorities, and our clinical trials may require a large number of test subjects. Our failure to comply with cGLP, cGCP and cGMP regulations may require us to repeat clinical trials, which would delay the regulatory approval process and increase our costs. Moreover, our business may be implicated if any of our CROs violates federal or state fraud and abuse or false claims laws and regulations or healthcare privacy and security laws.

If any of our clinical trial sites terminates for any reason, we may experience the loss of follow-up information on patients enrolled in our ongoing clinical trials unless we are able to transfer the care of those patients to another qualified clinical trial site. Further, if our relationship with any of our CROs is terminated, we may be unable to enter into arrangements with alternative CROs on commercially reasonable terms, or at all.

Switching or adding CROs or other suppliers can involve substantial cost and require extensive management time and focus. In addition, there is a natural transition period when a new CRO or supplier commences work. As a result, delays may occur, which can materially impact our ability to meet our desired clinical development timelines. If we are required to seek alternative supply arrangements, the resulting delays and potential inability to find a suitable replacement could materially and adversely impact our business.

## **Risks Related to Intellectual Property**

### ***We could be unsuccessful in obtaining or maintaining adequate patent protection for one or more of our products or product candidates.***

Our commercial success will depend, in large part, on our ability to obtain and maintain patent and other intellectual property protection with respect to our product candidates. We evaluate our global patent portfolio in the ordinary course of business to enhance patent protection in areas of our strategic focus and in key markets for our potential products and may abandon existing patents or patent applications related to terminated development programs or areas of low strategic importance. Patents might not be issued or granted with respect to our patent applications that are currently pending, and issued or granted patents might later be found to be invalid or unenforceable, be interpreted in a manner that does not adequately protect our current product or any future products, or fail to otherwise provide us with any competitive advantage. The patent position of biotechnology and pharmaceutical companies is generally uncertain because it involves complex legal and factual considerations. The standards applied by the U.S. Patent and Trademark Office, or USPTO, and foreign patent offices in granting patents are not always applied uniformly or predictably. For example, there is no uniform worldwide policy regarding patentable subject matter or the scope of claims allowable in biotechnology and pharmaceutical patents. Consequently, patents may not issue from our pending patent applications, or we may end up with patent claims of different scope in different jurisdictions. As such, we do not know the degree of future protection that we will have on our proprietary products and technology, if any, and a failure to obtain adequate intellectual property protection with respect to our product candidates and proprietary technology could have a material adverse impact on our business.

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

### ***Our intellectual property rights will not necessarily provide us with competitive advantages.***

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

The following examples are illustrative:

- others may be able to make compounds that are similar to our product candidates but that are not covered by the claims of the patents that we or our collaborators own or have exclusively licensed;
- others may independently develop similar or alternative technologies without infringing our intellectual property rights;
- issued patents that we own or have exclusively licensed may not provide us with any competitive advantages, or may be held invalid or unenforceable, as a result of legal challenges by our competitors;
- we may obtain patents for certain compounds many years before we obtain marketing approval for products containing such compounds, and because patents have a limited life, which may begin to run out prior to the commercial sale of the related product, the commercial value of our patents may be limited;
- our competitors might conduct research and development activities in countries where we do not have patent rights and then use the information learned from such activities to develop competitive products for sale in our major commercial markets;
- we may fail to develop additional proprietary technologies that are patentable;
- the laws of certain foreign countries may not protect our intellectual property rights to the same extent as the laws of the U.S., or we may fail to apply for or obtain adequate intellectual property protection in all the jurisdictions in which we operate; and
- the patents of others may have an adverse effect on our business, for example by preventing us from marketing one or more of our product candidates for one or more indications.

Any of the aforementioned threats to our competitive advantage could have a material adverse effect on our business.

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

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

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

***Our patents covering one or more of our products or product candidates could be found invalid or unenforceable if challenged.***

Any of our intellectual property rights could be challenged or invalidated despite measures we take to obtain patent and other intellectual property protection with respect to our product candidates and proprietary technology. For example, if we were to initiate legal proceedings against a third party to enforce a patent covering one of our product candidates, the defendant could counterclaim that our patent is invalid and/or unenforceable. In patent litigation in the U.S. and in some other jurisdictions, defendant counterclaims alleging invalidity and/or unenforceability are commonplace. Grounds for a validity challenge could be an alleged failure to meet any of several statutory requirements, for example, lack of novelty, obviousness, broken priority, lack of written description, or non-enablement. Grounds for an unenforceability assertion could be an allegation that someone connected with prosecution of the patent withheld material information from the USPTO or the applicable foreign counterpart, or made a misleading statement, during prosecution. A litigant or the USPTO itself could challenge our patents on this basis even if we believe that we have conducted our patent prosecution in accordance with the duty of candor and in good faith. The outcome following such a challenge is unpredictable.

With respect to challenges to the validity of our patents, for example, there might be invalidating prior art, of which we and the patent examiner were unaware during prosecution. If a defendant were to prevail on a legal assertion of invalidity and/or unenforceability, we would lose at least part, and perhaps all, of the patent protection on a product candidate. Even if a defendant does not prevail on a legal assertion of invalidity and/or unenforceability, our patent claims may be construed in a manner that would limit our ability to enforce such claims against the defendant and others. The cost of defending such a challenge, particularly in a foreign jurisdiction, and any resulting loss of patent protection could have a material adverse impact on one or more of our product candidates and our business.

Enforcing our intellectual property rights against third parties may also cause such third parties to file other counterclaims against us, which could be costly to defend, particularly in a foreign jurisdiction, and could require us to pay substantial damages, cease the sale of certain products or enter into a license agreement and pay royalties (which may not be possible on commercially reasonable terms or at all). Any efforts to enforce our intellectual property rights are also likely to be costly and may divert the efforts of our scientific and management personnel.

***Patent protection and patent prosecution for some of our product candidates is dependent on, and the ability to assert patents and defend them against claims of invalidity is maintained by, third parties.***

There have been and may be times in the future when certain patents that relate to our product candidates or any approved products are controlled by our licensees, sublicensees, licensors or other collaborators. Although we may, under such arrangements, have rights to consult with our collaborators on actions taken as well as back-up rights of prosecution and enforcement, we have in the past and may in the future relinquish rights to prosecute and maintain patents and patent applications within our portfolio as well as the ability to assert such patents against infringers. For example, currently the rights relating to the patent portfolio for XEN901 (now known as NBI-921352), other selective Nav1.6 inhibitors and dual Nav1.2/1.6 inhibitors are held by Neurocrine Biosciences, some of the rights relating to the patent portfolio for novel Nav1.7 inhibitors are held by Genentech and the rights to the patent portfolio for XEN402 were sold to Flexion (now known as FX301).

If any current or future licensee, sublicensee, licensor or other collaborators with rights to prosecute, assert or defend patents related to our product candidates fails to appropriately prosecute and maintain patent protection for patents covering any of our product candidates, or if patents covering any of our product candidates are asserted against infringers or defended against claims of invalidity or unenforceability in a manner which adversely affects such coverage, our ability to develop and commercialize any such product candidate may be adversely affected and we may not be able to prevent competitors from making, using and selling competing products.

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

Competitors may infringe our patents or the patents of our licensors. To counter infringement or unauthorized use, we may be required to file infringement claims, which can be expensive and time-consuming. In addition, in an infringement proceeding, a court may decide that a patent of ours or one of our licensors is not valid or is unenforceable or may refuse to stop the other party in such infringement proceeding from using the technology at issue on the grounds that our patents do not cover the technology in question. An adverse result in any litigation or defense proceedings could put one or more of our patents at risk of being invalidated, held unenforceable or interpreted narrowly, and could put any of our patent applications at risk of not yielding an issued patent.

Interference proceedings, derivation proceedings, entitlement proceedings, ex parte reexamination, inter partes review, post-grant review, and opposition proceedings provoked by third parties or brought by the USPTO or any foreign patent authority may be used to challenge inventorship, ownership, claim scope, or validity of our patent applications. An unfavorable outcome could require us to cease using the related technology or to attempt to license rights to it from the prevailing party. Our business could be harmed if the prevailing party does not offer us a license on commercially reasonable terms, if any license is offered at all. Litigation or interference proceedings may fail and, even if successful, may result in substantial costs and distract our management and other employees.

We may not be able to prevent, alone or with our licensors, misappropriation of our trade secrets or confidential information, particularly in countries where the laws may not protect those rights as fully as in the U.S. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the market price of our common shares.

***Claims that our product candidates or the sale or use of our future products infringe the patent or other intellectual property rights of third parties could result in costly litigation or could require substantial time and money to resolve, even if litigation is avoided.***

Our commercial success depends upon our ability to develop product candidates and commercialize products that may be approved in the future, using our proprietary technology without infringing the intellectual property rights of others. Our product or product candidates or any uses of them may now and in the future infringe third-party patents or other intellectual property rights. Third parties might allege that we or our collaborators are infringing their patent rights or that we have misappropriated their trade secrets, or that we are otherwise violating their intellectual property rights, whether with respect to the manner in which we have conducted our research or to the composition, use or manufacture of the compounds we have developed or are developing with our collaborators. Such third parties might resort to litigation against us or other parties we have agreed to indemnify, which litigation could be based on either existing intellectual property or intellectual property that arises in the future.

It is possible that relevant patents or patent applications held by third parties will cover our product candidates at the time of launch and we may also fail to identify, relevant patents or patent applications held by third parties that cover our product candidates. For example, applications filed before November 29, 2000, and certain applications filed after that date that will not be filed outside the U.S. remain confidential until patents issue. Other patent applications in the U.S. and several other jurisdictions are published approximately 18 months after the earliest filing for which priority is claimed, with such earliest filing date being commonly referred to as the priority date. Furthermore, publication of discoveries in the scientific or patent literature often lags behind actual discoveries. Therefore, we cannot be certain that we or our collaborators were the first to invent, or the first to file patent applications on, our product candidates or for their uses, or that our product candidates will not infringe patents that are currently issued or that are issued in the future. In the event that a third party has also filed a patent application covering one of our product candidates or a similar invention, we may have to participate in an adversarial proceeding, known as an interference, declared by the USPTO or its foreign counterpart to determine priority of invention. Additionally, pending patent applications and patents which have been published can, subject to certain limitations, be later amended in a manner that could cover our current or future products, if any, or their use.

Defending against claims of patent infringement, misappropriation of trade secrets or other violations of intellectual property rights could be costly and time consuming, regardless of the outcome. Thus, even if we were to ultimately prevail, or to settle at an early stage, such litigation could burden us with substantial unanticipated costs. In addition, litigation or threatened litigation could result in significant demands on the time and attention of our management team, distracting them from the pursuit of other company business. Claims that our product candidates or the sale or use making, offering to sell, or importing, of our future products infringe, misappropriate or otherwise violate third-party intellectual property rights could therefore have a material adverse impact on our business.

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

In addition, any future intellectual property litigation, interference or other administrative proceedings will result in additional expense and distraction of our personnel. An adverse outcome in such litigation or proceedings may expose us or any future strategic collaborators to loss of our proprietary position, expose us to significant liabilities, or require us to seek licenses that may not be available on commercially acceptable terms, if at all, each of which could have a material adverse effect on our business.

***Unfavorable outcomes in intellectual property litigation could limit our research and development activities and/or our ability to commercialize certain products.***

If third parties successfully assert their intellectual property rights against us, we might be barred from using certain aspects of our technology or barred from developing and commercializing certain products. Prohibitions against using certain technologies, or prohibitions against commercializing certain products, could be imposed by a court or by a settlement agreement between us and a plaintiff. In addition, if we are unsuccessful in defending against allegations that we have infringed, misappropriated or otherwise violated patent or other intellectual property rights of others, we may be forced to pay substantial damage awards to the plaintiff. There is inevitable uncertainty in intellectual property litigation and we could lose, even if the case against us is weak or flawed. If litigation leads to an outcome unfavorable to us, we may be required to obtain a license from the intellectual property owner in order to continue our research and development programs or to market any resulting product. It is possible that the necessary license will not be available to us on commercially acceptable terms, or at all. Alternatively, we may be required to modify or redesign our current or future products, if any, in order to avoid infringing or otherwise violating third-party intellectual property rights. This may not be technically or commercially feasible, may render those products less competitive, or may delay or prevent the entry of those products to the market. Any of the foregoing could limit our research and development activities, our ability to commercialize one or more product candidates, or both.

In order to avoid or settle potential claims with respect to any patent or other intellectual property rights of third parties, we may choose or be required to seek a license from a third party and be required to pay license fees or royalties or both, which could be substantial. These licenses may not be available on acceptable terms, or at all. Even if we or any future collaborators were able to obtain a license, the rights may be nonexclusive, which could result in our competitors gaining access to the same intellectual property. Ultimately, we could be prevented from commercializing a product, or be forced, by court order or otherwise, to cease some or all aspects of our business operations, if, as a result of actual or threatened patent or other intellectual property claims, we are unable to enter into licenses on acceptable terms. Further, we could be found liable for significant monetary damages as a result of claims of intellectual property infringement. In the future, we may receive offers to license and demands to license from third parties claiming that we are infringing their intellectual property or owe license fees and, even if such claims are without merit, we could fail to successfully avoid or settle such claims.

If Neurocrine Biosciences, Flexion, Genentech, Merck or other collaborators license or otherwise acquire rights to intellectual property controlled by a third party in various circumstances, for example, where a product could not be legally developed or commercialized in a country without the third-party intellectual property right or, where it is decided that it would be useful to acquire such third-party right to develop or commercialize the product, they are eligible under our collaboration agreements to decrease payments payable to us on a product-by-product basis and, in certain cases, on a country-by-country basis. Any of the foregoing events could harm our business significantly.

***If we breach any of the agreements under which we license the use, development and commercialization rights to our product candidates or technology from third parties, we could lose license rights that are important to our business.***

Under our existing license and other agreements, including those associated with our XEN1101 and XEN007 programs, we are subject to various obligations, including diligence obligations such as development and commercialization obligations, as well as potential milestone payments and other obligations. If we fail to comply with any of these obligations or otherwise breach our license agreements, our licensing partners may have the right to terminate the applicable license in whole or in part, or convert an exclusive license to a non-exclusive license. Generally, the loss of any one of our current licenses, or license exclusivity, or any other license we may acquire in the future, could materially harm our business, prospects, financial condition and results of operations.

***Confidentiality agreements with employees and third parties may not prevent unauthorized disclosure of trade secrets and other proprietary information, which would harm our competitive position.***

In addition to patents, we rely on trade secrets, technical know-how and proprietary information concerning our discovery platform, business strategy and product candidates in order to protect our competitive position, which are difficult to protect. In the course of our research and development activities and our business activities, we often rely on confidentiality agreements to protect our proprietary information. Such confidentiality agreements are used, for example, when we talk to vendors of laboratory, manufacturing or clinical development services or potential strategic collaborators. In addition, each of our employees and consultants is required to sign a confidentiality agreement and invention assignment agreement upon joining our company. Our employees, consultants, contractors, business partners or outside scientific collaborators might intentionally or inadvertently disclose our trade secret information in breach of these confidentiality agreements or our trade secrets may otherwise be misappropriated. Our collaborators might also have rights to publish data and we might fail to apply for patent protection prior to such publication. It is possible that a competitor will make use of such information, and that our competitive position will be compromised. In addition, to the extent that our employees, consultants or contractors use intellectual property owned by others in their work for us, disputes may arise as to the rights in related or resulting know-how and inventions. Enforcing a claim that a third party illegally obtained and is using any of our trade secrets is expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the U.S. sometimes are less willing than U.S. courts to protect trade secrets. Moreover, our competitors may independently develop equivalent knowledge, methods and know-how. If we cannot maintain the confidentiality of our proprietary technology and other confidential information, then our ability to obtain patent protection or to protect our trade secret information would be jeopardized, which would adversely affect our competitive position.

***Recent court decisions could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents.***

The patent positions of pharmaceutical and biopharmaceutical companies can be highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved. No consistent policy regarding the breadth of claims allowed in patents in these fields has emerged to date in the United States. There have been recent changes regarding how patent laws are interpreted, and both the U.S. Patent and Trademark Office, or USPTO, and Congress have recently made significant changes to the patent system. There have been U.S. Supreme Court decisions that now show a trend of the Supreme Court which is distinctly negative on some patents. The trend of these decisions along with resulting changes in patentability requirements being implemented by the USPTO could make it increasingly difficult for us to obtain and maintain patents on our products. We cannot accurately predict future changes in the interpretation of patent laws or changes to patent laws which might be enacted into law. Those changes may materially affect our patents, our ability to obtain patents, the costs to prosecute our patent applications and enforce our patents and/or the patents and applications of our collaborators. The patent situation in these fields outside the United States also has uncertainties. Changes in either the patent laws or in interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property or narrow the scope of our patent protection. Accordingly, we cannot predict the breadth of claims that may be allowed or enforced in the patents we own or to which we have a license or third-party patents.

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

Depending upon the timing, duration and specifics of FDA marketing approval of our product candidates, if any, one or more U.S. patents may be eligible for limited patent term restoration under the Hatch-Waxman Act. The Hatch-Waxman Act permits a patent restoration term of up to five years as compensation for patent term lost during clinical testing of the product and the subsequent FDA regulatory review process. However, we may not be granted an extension because of, for example, failing to apply within applicable deadlines, failing to apply prior to expiration of relevant patents or otherwise failing to satisfy applicable requirements. Moreover, the applicable time period or the scope of patent protection afforded could be less than five years, or even less than we request if that number is less than five years.

If we are unable to obtain patent term extension or restoration or the term of any such extension is less than we request, the period during which we will have the right to exclusively market our product will be shortened and our competitors may obtain approval of competing products following our patent expiration, and our revenue could be reduced, possibly materially.

***We have not registered our corporate name as a trademark in all of our potential markets, and failure to secure those registrations could adversely affect our business.***

Our corporate name, Xenon, has not been trademarked in each market where we operate and plan to operate. Our trademark applications for our corporate name or the name of our products may not be allowed for registration, and our registered trademarks may not be maintained or enforced. During trademark registration proceedings, we may receive rejections, which we may be unable to overcome in our responses. Third parties may also attempt to register trademarks utilizing the Xenon name on their products, and we may not be successful in preventing such usage. In addition, in the USPTO and in comparable agencies in many foreign jurisdictions, third parties are given an opportunity to oppose pending trademark applications and to seek to cancel registered trademarks. Opposition or cancellation proceedings may be filed against our trademarks, and our trademarks may not survive such proceedings. If we do not secure registrations for our trademarks, we may encounter more difficulty in enforcing them against third parties than we otherwise would.

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

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

#### **Risks Related to Our Industry**

***If product liability lawsuits are brought against us, we may incur substantial liabilities and may be required to limit commercialization of our current and any future products.***

We face an inherent risk of product liability as a result of the clinical testing of our product candidates, and we will face an even greater risk if we commercialize any product candidates. For example, we may be sued if any of our product candidates, including any that are developed in combination with other therapies, allegedly causes injury or is found to be otherwise unsuitable during product testing, manufacturing, marketing or sale. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability and a breach of warranties. Claims could also be asserted under state consumer protection acts. If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit commercialization of our product candidates. Even successful defense would require significant financial and management resources. There is also risk that third parties we have agreed to indemnify could incur liability. Regardless of the merits or eventual outcome, liability claims may result in:

- decreased demand for our product candidates or any resulting products;
- injury to our reputation;
- withdrawal of clinical trial participants;
- costs to defend the related litigation;
- a diversion of management's time and our resources;
- substantial monetary awards to trial participants or patients;
- product recalls, withdrawals or labeling, marketing or promotional restrictions;
- loss of revenue;
- the inability to commercialize our product candidates; and
- a decline in the market price of our common shares.

We currently carry product liability insurance of \$10,000,000 per occurrence and \$10,000,000 aggregate limit. We believe our product liability insurance coverage is appropriate relative to our current clinical programs; however, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses due to liability. If and when we obtain marketing approval for product candidates, we intend to expand our insurance coverage to include the sale of commercial products; however, we may then be unable to obtain product liability insurance on commercially reasonable terms or in adequate amounts. On occasion, large judgments have been awarded in class action lawsuits based on drugs or medical treatments that had unanticipated adverse effects. A successful product liability claim or series of claims brought against us could cause the market price of our common shares to decline and, if judgments exceed our insurance coverage, could adversely affect our future results of operations and business.

Patients with certain of the diseases targeted by our product candidates are often already in severe and advanced stages of disease and have both known and unknown significant pre-existing and potentially life-threatening conditions. During the course of treatment, patients may suffer adverse events, including death, for reasons that may be related to our product candidates. Such events could subject us to costly litigation, require us to pay substantial amounts of money to injured patients, delay, negatively impact or end our opportunity to receive or maintain regulatory approval to market those product candidates, or require us to suspend or abandon our commercialization efforts. Even in a circumstance in which we do not believe that an adverse event is related to our products, the investigation into the circumstance may be time-consuming or inconclusive. These investigations may interrupt our sales efforts, delay our regulatory approval process in other countries, or impact and limit the type of regulatory approvals our product candidates receive or maintain. As a result of these factors, a product liability claim, even if successfully defended, could have a material adverse effect on our business, financial condition or results of operations.

***Our current and future operations in the U.S. and elsewhere will be subject, directly or indirectly, to applicable federal and state anti-kickback, fraud and abuse, false claims, transparency, health information privacy and security, and other healthcare laws and regulations, which could expose us to criminal sanctions, civil penalties, contractual damages, reputational harm, administrative burdens, and diminished profits and future earnings.***

Healthcare providers, physicians and third-party payers in the U.S. and elsewhere play a primary role in the recommendation and prescription of any product candidates for which we obtain marketing approval. Our current arrangements with health care providers and our future arrangements with third-party payers and customers may expose us to broadly applicable fraud and abuse and other healthcare laws and regulations, including, without limitation, the federal Anti-Kickback Statute and the federal False Claims Act, that may constrain the business or financial arrangements and relationships through which we market, sell and distribute any products for which we obtain marketing approval. In addition, we may be subject to transparency laws and patient privacy regulation by the federal government and by the U.S. states and foreign jurisdictions in which we conduct our business. The applicable federal, state and foreign healthcare laws and regulations that may affect our ability to operate include the following:

- the federal Anti-Kickback Statute, which prohibits, among other things, persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce or reward either the referral of an individual for, or the purchase, order or recommendation of, any good or service for which payment may be made under federal and state healthcare programs such as Medicare and Medicaid;
- federal civil and criminal false claims laws, including the federal False Claims Act, which can be enforced through civil whistleblower, or qui tam actions, as well as civil monetary penalty laws can impose criminal and civil penalties, assessment, and exclusion from participation for various forms of fraud and abuse involving the federal health care programs, such as Medicare and Medicaid;
- HIPAA, which imposes criminal and civil liability for, among other things, executing a scheme to defraud any healthcare benefit program and making false statements relating to healthcare matters;
- the federal Open Payments program which requires applicable manufacturers of certain drugs, devices, biologics and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program (with certain exceptions) to report annually to CMS, information related to: certain payments or other transfers of value made to physicians, as defined by such law, and teaching hospitals and ownership or investment interests held by such healthcare professionals and their immediate family members; and
- analogous state and foreign laws and regulations, such as state anti-kickback and false claims laws, which may apply to sales or marketing arrangements and claims involving healthcare items or services reimbursed by non-governmental third-party payers, including private insurers; state and foreign laws that require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government or otherwise restrict payments that may be made to healthcare providers; state and foreign laws that require drug manufacturers to report information related to payments to physicians and other healthcare providers or marketing expenditures; state and local laws requiring the registration of pharmaceutical sales representatives; and state and foreign laws governing the collection, export, privacy, use and security of biological materials and health information in certain circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts.

Efforts to ensure that our business arrangements with third parties will comply with applicable healthcare laws and regulations may involve substantial costs. It is possible that governmental authorities will conclude that our business practices may not comply with current or future statutes, regulations or case law involving applicable fraud and abuse or other healthcare laws and regulations. If our operations are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, including, without limitation, damages, fines, disgorgement, imprisonment, exclusion from participation in government healthcare programs, such as Medicare and Medicaid, integrity oversight and reporting obligations, and the curtailment or restructuring of our operations, which could have a material adverse effect on our business. If any of the physicians or other providers or entities with whom we expect to do business, including our collaborators, is found not to be in compliance with applicable laws, it may be subject to criminal, civil or administrative sanctions, including exclusions from participation in government healthcare programs, which could also materially affect our business.

***If we fail to comply with environmental, health and safety laws and regulations, we could become subject to fines or penalties or incur costs that could have a material adverse effect on the success of our business.***

Our research and development activities involve the controlled use of potentially harmful biological materials as well as hazardous materials, chemicals, and various radioactive compounds typically employed in molecular and cellular biology. For example, we routinely use cells in culture and we employ small amounts of radioisotopes. We cannot completely eliminate the risk of accidental contamination or injury from the use, storage, handling, or disposal of these materials through our maintenance of up-to-date licensing and training programs. In the event of contamination or injury, we could be held liable for damages that result, and any liability could exceed our resources. We currently carry insurance covering certain claims arising from our use of these materials. However, if we are unable to maintain our insurance coverage at a reasonable cost and with adequate coverage, our insurance may not cover any liability that may arise. We are subject to Canadian federal, provincial, and local, and may be subject to U.S. and/or foreign, laws and regulations governing the use, storage, handling, and disposal of these materials and specified waste products. Complying with regulations regarding the use of these materials could be costly, and if we fail to comply with these regulations, it could have a material adverse effect on our operations and profitability.

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

Our headquarters are located in Burnaby, British Columbia, Canada. We are vulnerable to natural disasters such as earthquakes that could disrupt our operations. If a natural disaster, power outage, fire or other event occurred that prevented us from using all or a significant portion of our headquarters, that damaged critical infrastructure, such as the manufacturing facilities of our CMOs, or that otherwise disrupted operations, it may be difficult or, in certain cases, impossible for us to continue our business for a substantial period of time. Although we carry insurance for earthquakes and other natural disasters, we may not carry sufficient business interruption insurance to compensate us for all losses that may occur. The disaster recovery and business continuity plans we have in place may not be adequate in the event of a serious disaster or similar event. We may incur substantial expenses as a result of a natural disaster or earthquake, which could have a material adverse effect on our business. In addition, we may lose samples or other valuable data. The occurrence of any of the foregoing could have a material adverse effect on our business.

#### **Risks Related to the Securities Markets and Ownership of Our Common Shares**

***The market price of our common shares may be volatile, and purchasers of our common shares could incur substantial losses.***

The market price of our common shares has fluctuated in the past and is likely to be volatile in the future. As a result of this volatility, investors may experience losses on their investment in our common shares. The market price for our common shares may be influenced by many factors, including the following:

- announcements by us or our competitors of new products, product candidates or new uses for existing products, significant contracts, commercial relationships or capital commitments and the timing of these introductions or announcements;
- actions by any of our collaborators regarding our product candidates they are developing, including announcements regarding clinical or regulatory decisions or developments of our collaboration;
- unanticipated serious safety concerns related to the use of any of our products and product candidates;
- results from or delays of clinical trials of our product candidates;
- failure to obtain or delays in obtaining or maintaining product approvals or clearances from regulatory authorities;
- adverse regulatory or reimbursement announcements;
- announcements by us or our competitors of significant acquisitions, strategic collaborations, licenses, joint ventures or capital commitments;

- the results of our efforts to discover or develop additional product candidates;
- our dependence on third parties, including our collaborators, CROs, clinical trial sponsors and clinical investigators;
- regulatory or legal developments in Canada, the U.S. or other countries;
- developments or disputes concerning patent applications, issued patents or other proprietary rights;
- the recruitment or departure of key scientific or management personnel;
- our ability to successfully commercialize our future product candidates we develop independently, if approved;
- the level of expenses related to any of our product candidates or clinical development programs;
- actual or anticipated changes in estimates as to financial results, development timelines or recommendations by securities analysts;
- actual or anticipated quarterly variations in our financial results or those of our competitors;
- any change to the composition of the board of directors or key personnel;
- sales of common shares by us or our shareholders in the future, as well as the overall trading volume of our common shares;
- failure to comply with covenants or make required payments under loan agreements;
- changes in the structure of healthcare payment systems;
- commencement of, or our involvement in, litigation;
- general economic, industry and market conditions in the pharmaceutical and biotechnology sectors and other factors that may be unrelated to our operating performance or the operating performance of our competitors, including changes in market valuations of similar companies; and
- the other factors described in this “Risk Factors” section.

In addition, the stock market in general, and Nasdaq and the biopharmaceutical industry in particular, have from time to time experienced volatility that often has been unrelated to the operating performance of the underlying companies. These broad market and industry fluctuations may adversely affect the market price of our common shares, regardless of our operating performance. In several recent situations where the market price of a stock has been volatile, holders of that stock have instituted securities class action litigation against the company that issued the stock. If any of our shareholders were to bring a lawsuit against us, the defense and disposition of the lawsuit could be costly and divert the time and attention of our management and harm our operating results.

***Future sales of our common shares in the public market could cause the market price of our common shares to fall.***

The market price of our common shares could decline as a result of sales of a large number of our common shares or the perception that these sales could occur. These sales, or the possibility that these sales may occur, also might make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate.

In addition, in the future, we may issue additional common shares, preferred shares, or other equity or debt securities convertible into common shares in connection with a financing, acquisition, litigation settlement, employee arrangements or otherwise. Any such issuance could result in substantial dilution to our existing shareholders and could cause the market price of our common shares to decline.

***Provisions in our corporate charter documents and Canadian law could make an acquisition of us, which may be beneficial to our shareholders, more difficult and may prevent attempts by our shareholders to replace or remove our current management and/or limit the market price of our common shares.***

Provisions in our articles and our by-laws, as well as certain provisions under the Canada Business Corporations Act, or CBCA, and applicable Canadian securities laws, may discourage, delay or prevent a merger, acquisition, tender offer or other change in control of us that shareholders may consider favorable, including transactions in which they might otherwise receive a premium for their common shares. These provisions could also limit the price that investors might be willing to pay in the future for our common shares, thereby depressing the market price of our common shares. In addition, because our board of directors is responsible for appointing the members of our management team, these provisions may frustrate or prevent any attempts by our shareholders to replace or remove our current management by making it more difficult for shareholders to replace members of our board of directors. Among other things, these provisions include the following:

- shareholders cannot amend our articles unless such amendment is approved by shareholders holding at least two-thirds of the shares entitled to vote on such approval;
- shareholders must give advance notice to nominate directors or to submit proposals for consideration at shareholders' meetings; and
- applicable Canadian securities laws generally require, subject to certain exceptions, a tender offer to remain open for 105 days and that more than 50% of the outstanding securities not owned by the offeror be tendered before the offeror may take up the securities.

Any provision in our articles, by-laws, under the CBCA or under any applicable Canadian securities law that has the effect of delaying or deterring a change in control could limit the opportunity for our shareholders to receive a premium for their common shares, and could also affect the price that some investors are willing to pay for our common shares.

***U.S. civil liabilities may not be enforceable against us, our directors, or our officers.***

We are governed by the CBCA and our principal place of business is in Canada. Many of our directors and officers reside outside of the U.S., and all or a substantial portion of their assets as well as all or a substantial portion of our assets are located outside the U.S. As a result, it may be difficult for investors to effect service of process within the U.S. upon us and certain of our directors and officers or to enforce judgments obtained against us or such persons, in U.S. courts, in any action, including actions predicated upon the civil liability provisions of U.S. federal securities laws or any other laws of the U.S. Additionally, rights predicated solely upon civil liability provisions of U.S. federal securities laws or any other laws of the U.S. may not be enforceable in original actions, or actions to enforce judgments obtained in U.S. courts, brought in Canadian courts, including courts in the Province of British Columbia.

***We are governed by the corporate and securities laws of Canada which in some cases have a different effect on shareholders than the corporate laws of Delaware, U.S. and U.S. securities laws.***

We are governed by the CBCA and other relevant laws, which may affect the rights of shareholders differently than those of a company governed by the laws of a U.S. jurisdiction, and may, together with our charter documents, have the effect of delaying, deferring or discouraging another party from acquiring control of our company by means of a tender offer, a proxy contest or otherwise, or may affect the price an acquiring party would be willing to offer in such an instance. The material differences between the CBCA and Delaware General Corporation Law, or DGCL, that may have the greatest such effect include, but are not limited to, the following: (i) for material corporate transactions (such as mergers and amalgamations, other extraordinary corporate transactions or amendments to our articles) the CBCA generally requires a two-thirds majority vote by shareholders, whereas DGCL generally only requires a majority vote; and (ii) under the CBCA holders of 5% or more of our shares that carry the right to vote at a meeting of shareholders can requisition a special meeting of shareholders, whereas such right does not exist under the DGCL.

***An active trading market for our common shares may not be maintained.***

Our common shares are currently traded on Nasdaq, but we can provide no assurance that we will be able to maintain an active trading market on Nasdaq or any other exchange in the future. If an active market for our common shares is not maintained, it may be difficult for our shareholders to sell the common shares they have purchased without depressing the market price for the common shares or at all. Further, an inactive market may also impair our ability to raise capital by selling additional common shares and may impair our ability to enter into strategic collaborations or acquire companies or products by using our common shares as consideration.

***We are a smaller reporting company, and any decision on our part to comply only with certain reduced reporting and disclosure requirements applicable to such companies could make our common shares less attractive to investors.***

We are a "smaller reporting company," as defined under the Securities Exchange Act of 1934, as amended, or the Exchange Act. For as long as we continue to be a smaller reporting company, we may choose to take advantage of exemptions from various reporting requirements applicable to other public companies that are not smaller reporting companies, including, but not limited to, two years of audited financial statements in our annual reports.

We will remain a smaller reporting company so long as, as of June 30 of the preceding year, (i) the market value of our common shares held by non-affiliates, or our public float, is less than \$250 million; or (ii) we have annual revenues less than \$100 million and either we have no public float or our public float is less than \$700 million.

Investors could find our common shares less attractive if we choose to rely on these disclosure exemptions. If some investors find our common shares less attractive as a result of any choices to reduce future disclosure, there may be a less active trading market for our common shares and the market price of our common shares may be more volatile.

***Effective December 31, 2019, we are no longer an emerging growth company which will increase our costs and demands on management and could harm our operating results and our ability to accurately report our financial condition, results of operations or cash flows, which may adversely affect investor confidence in us and, as a result, the value of our common shares.***

Prior to our loss of emerging growth company status, we availed ourselves of the exemption from the requirement that our independent registered public accounting firm attest to the effectiveness of our internal control over financial reporting under Section 404. However, we may no longer avail ourselves of this exemption and we expect to incur significant expense and devote substantial management effort toward ensuring compliance with Section 404.

We currently do not have an internal audit group, and we will need to continue to hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge, and it may be difficult to recruit and maintain such personnel. Implementing any appropriate changes to our internal control over financial reporting may require specific compliance training for our directors, officers and employees and take a significant period of time to complete. Such changes may not, however, be effective in maintaining the adequacy of our internal control over financial reporting, and any failure to maintain that adequacy, or consequent inability to produce accurate financial statements or other reports on a timely basis, could increase our operating costs and could materially impair our ability to operate our business.

***If we fail to maintain an effective system of internal control over financial reporting, we may not be able to accurately report our financial results or prevent fraud. As a result, shareholders could lose confidence in our financial and other public reporting, which would harm our business and the market price of our common shares.***

Effective internal control over financial reporting is necessary for us to provide reliable financial reports and, together with adequate disclosure controls and procedures, are designed to prevent fraud. Any failure to implement required new or improved controls, or difficulties encountered in their implementation could cause us to fail to meet our reporting obligations.

We are required to disclose changes made in our internal controls and procedures on a quarterly basis and our management is required to assess the effectiveness of these controls annually. We are also required to obtain an independent assessment of the effectiveness of our internal controls which could detect problems that our management's assessment might not. Going forward, even if our management concludes that our internal control over financial reporting is effective, our independent registered public accounting firm may conclude that there are material weaknesses or significant deficiencies with respect to our internal controls or the level at which our internal controls are documented, designed, implemented or reviewed. If we or our independent registered public accounting firm identifies deficiencies in our internal control over financial reporting that are deemed to be material weaknesses or that may require prospective or retroactive changes to our financial statements, investors may lose confidence in our reported financial information, which could cause the market price of our common shares to decline and we could be subject to sanctions or investigations by the SEC or other regulatory authorities, which would require additional financial and management resources. Irrespective of compliance with Section 404, any failure of our internal control over financial reporting could have a material adverse effect on our stated operating results and harm our reputation.

***Future sales and issuances of our common shares, preferred shares, or rights to purchase common shares, including warrants or pursuant to our equity incentive plans, could cause you to incur dilution and could cause the market price of our common shares to fall.***

As of December 31, 2019, stock options to purchase 3,534,236 of our common shares with a weighted-average exercise price of \$7.90 per common share were outstanding, a warrant to purchase 40,000 of our common shares with a weighted-average exercise price of \$9.79 per common share was outstanding, and 1,016,000 of our Series 1 Preferred Shares were outstanding, which are convertible into our common shares on a one-for-one basis at the option of the holder, subject to certain ownership limitations following a requested conversion. During the year ended December 31, 2018, certain funds affiliated with BVF Partners L.P. exercised their conversion rights to convert 1,852,000 Series 1 Preferred Shares into the same number of common shares. The exercise of any of these stock options or warrant or conversion of the remaining Series 1 Preferred Shares would result in dilution to current shareholders. Further, because we anticipate the need to raise additional capital to fund our clinical development programs, we may in the future sell substantial amounts of common shares, preferred shares, or other securities convertible into or exchangeable for common shares. Pursuant to our equity incentive plans, our compensation committee (or a subset or delegate thereof) is authorized to grant equity-based incentive awards to our employees, directors and consultants. Future stock option grants and issuances of common shares under our share-based compensation plans may have an adverse effect on the market price of our common shares.

Any future issuances of common shares, preferred shares, or securities such as warrants, notes, or preferred shares that are convertible into, exercisable or exchangeable for, our common shares, would have a dilutive effect on the voting and economic interests of our existing shareholders.

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

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

***Nasdaq may delist our securities from its exchange, which could limit investors' ability to make transactions in our securities and subject us to additional trading restrictions.***

Our common shares are listed on Nasdaq under the trading symbol "XENE." Our securities may fail to meet the continued listing requirements to be listed on Nasdaq. If Nasdaq delists our common shares from trading on its exchange, we could face significant material adverse consequences, including:

- significant impairment of the liquidity for our common shares, which may substantially decrease the market price of our common shares;
- a limited availability of market quotations for our securities;
- a determination that our common shares qualify as a "penny stock" which will require brokers trading in our common shares to adhere to more stringent rules and possibly resulting in a reduced level of trading activity in the secondary trading market for our common shares;
- a limited amount of news and analyst coverage for our company; and
- a decreased ability to issue additional securities or obtain additional financing in the future.

***If securities or industry analysts do not publish research reports about our business, or if they issue an adverse opinion about our business, the market price of our common shares and the trading volume of our common shares could decline.***

The trading market for our common shares is influenced by the research and reports that securities or industry analysts publish about us or our business. If too few securities or industry analysts cover our company, the market price of our common shares would likely be negatively impacted. If securities and industry analysts who cover us downgrade our common shares or publish inaccurate or unfavorable research about our business, the market price of our common shares would likely decline. If one or more of these analysts cease coverage of our company or fail to publish reports on us regularly, demand for our common shares could decrease, which might cause the market price of our common shares and the trading volume of our common shares to decline.

***Our management team has broad discretion as to the use of the net proceeds from public and private equity and debt financings and the investment of these proceeds may not yield a favorable return. We may invest the proceeds in ways with which our shareholders disagree.***

We have broad discretion in the application of any net proceeds we have received pursuant to our January 2020 public offering of common shares, our November 2019 "at-the-market" equity offering program with Jefferies and Stifel and our sale of common shares to Neurocrine Biosciences in December 2019, as well as the net proceeds to us from previous equity and debt financings, including the net proceeds we received pursuant to our 2018 "at-the-market" equity offering programs, the net proceeds from our August 2018 amended and restated loan and security agreement, pursuant to which we have borrowed an aggregate of \$15.5 million of principal and the net proceeds from our September 2018 public offering of common shares. You may not agree with our decisions, and our use of the proceeds and our existing cash and cash equivalents and marketable securities may not improve our results of operation or enhance the value of our common shares. Our failure to apply these funds effectively could have a material adverse effect on our business, delay the development of our product candidates and cause the market price of our common shares to decline. In addition, until the net proceeds are used, they may be placed in investments that do not produce significant income or that may lose value.

***We do not anticipate paying any cash dividends on our common shares in the foreseeable future.***

We do not currently intend to pay any cash dividends on our common shares in the foreseeable future. We currently intend to retain all of our future earnings, if any, to finance the growth and development of our business. In addition, the terms of any future debt agreements may preclude us from paying dividends. As a result, capital appreciation, if any, of our common shares may be investors' sole source of gain for the foreseeable future.

**Item 1B. Unresolved Staff Comments**

None.

**Item 2. Properties**

Our headquarters are located in Burnaby, British Columbia, where we occupy approximately 41,332 square feet of office and laboratory space. The term of the lease expires in March 2022. We currently pay an aggregate of approximately \$105,084 per month in base rent, property tax, common area maintenance fees and management fees, and the landlord holds a security deposit equal to approximately \$68,743.

Our U.S. office is located in Boston, Massachusetts, where we occupy on a month-to-month basis approximately 215 square feet.

We believe that our existing facilities are adequate to meet our business requirements for the near-term and that additional space will be available on commercially reasonable terms, if required.

**Item 3. Legal Proceedings**

From time to time, we may become involved in legal proceedings or be subject to claims arising in the ordinary course of our business. We are not presently a party to any legal proceedings that, in the opinion of our management, would reasonably be expected to have a material adverse effect on our business, financial condition, operating results or cash flows if determined adversely to us. Regardless of the outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources and other factors.

**Item 4. Mine Safety Disclosures**

Not applicable.

**Item 5. Market for Registrant’s Common Equity, Related Shareholder Matters and Issuer Purchases of Equity Securities**

**Market Information**

Our common shares have been traded on the Nasdaq Global Market since November 5, 2014 under the symbol “XENE.” On March 5, 2020, the last reported sale price of our common shares was \$15.38 per share.

**Holders**

As of March 5, 2020, there were approximately 149 holders of record of our common shares. The actual number of shareholders is greater than this number of record holders and includes shareholders who are beneficial owners but whose common shares are held in street name by brokers and other nominees.

**Dividends**

We have never declared or paid any cash dividends on our common shares or any other securities. We currently anticipate that we will retain all available funds and any future earnings, if any, in the foreseeable future for use in the operation of our business and do not currently anticipate paying cash dividends in the foreseeable future. Payment of future cash dividends, if any, will be at the discretion of the board of directors, subject to applicable law and will depend on various factors, including our financial condition, operating results, current and anticipated cash needs, the requirements of current or then-existing debt instruments and other factors the board of directors deems relevant.

Canadian withholding tax at a rate of 25% (subject to reduction under the provisions of any applicable income tax treaty or convention to which Canada is a signatory) will be payable on the gross amount of a dividend on our common shares paid or credited, or deemed to be paid or credited, to a holder of our common shares who, for purposes of the Income Tax Act (Canada), is not (and is not deemed to be) resident in Canada, or a Non-Resident of Canada Holder. The Canadian withholding tax will be deducted directly by us or our paying agent from the amount of the dividend otherwise payable and remitted to the Receiver General of Canada. The rate of withholding tax applicable to a dividend paid on our common shares to a Non-Resident of Canada Holder who is a resident of the U.S. for purposes of the Canada-U.S. Tax Convention (1980), or the Convention, is the beneficial owner of the dividend and qualifies for the full benefits of the Convention will generally be reduced to 15% or, if such a Non-Resident of Canada Holder is a company that owns (or, for purposes of the Convention, is considered to own) at least 10% of our voting shares, to 5%. Not all persons who are residents of the U.S. for purposes of the Convention will qualify for the benefits of the Convention. A Non-Resident of Canada Holder who is a resident of the U.S. is advised to consult his or her tax advisor in this regard. The rate of withholding tax on dividends is also reduced under other bilateral income tax treaties to which Canada is a signatory.

**Securities Authorized for Issuance under Equity Compensation Plans**

The information concerning our equity compensation plans is incorporated by reference herein to our Proxy Statement for the 2020 Annual Meeting of Shareholders to be filed with the SEC within 120 days after the end of our fiscal year ended December 31, 2019.

**Performance Graph**

As a smaller reporting company, we are not required to provide the information requested by this item pursuant to Item 201(e) of Regulation S-K.

**Recent Sales of Unregistered Securities**

None.

**Issuer Repurchases of Equity Securities**

None.

**Item 6. Selected Financial Data**

As a smaller reporting company, we are not required to provide the information requested by this item pursuant to Item 301 of Regulation S-K.

## Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

You should read the following discussion and analysis together with Part II, Item 6 — “Selected Financial Data” and our consolidated financial statements and notes included elsewhere in this Annual Report. The following discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ from those expressed or implied in any forward-looking statements as a result of various factors, including those set forth under the caption Part I, Item 1A — “Risk Factors.” Throughout this discussion, unless the context specifies or implies otherwise, the terms “Xenon,” “we,” “us,” and “our” refer to Xenon Pharmaceuticals Inc. and its subsidiary.

### Overview

We are a clinical stage biopharmaceutical company committed to developing innovative therapeutics to improve the lives of patients with neurological disorders. We are advancing a novel product pipeline of neurology-focused therapies to address areas of high unmet medical need, with a focus on epilepsy.

#### Proprietary Programs

- XEN1101 is a differentiated Kv7 potassium channel modulator being developed for the treatment of epilepsy and potentially other neurological disorders. A Phase 2b randomized, double-blind, placebo-controlled, multicenter clinical trial (called the X-TOLE study) is underway to evaluate the clinical efficacy, safety and tolerability of XEN1101 administered as adjunctive treatment in approximately 300 adult patients with focal epilepsy. The primary endpoint is the median percent change in monthly focal seizure frequency from baseline compared to treatment period of active versus placebo. Patient enrollment for this XEN1101 Phase 2b clinical trial is ongoing in the United States, Canada and Europe. Long term six-and nine-month toxicology studies have now been completed, providing support for the 12-month open label extension for patients enrolled in the Phase 2b clinical trial. The clinical trial protocol includes an option to conduct an interim analysis. Depending upon the rate of enrollment, top-line results are anticipated in the second half of 2020. We also continue to explore the development of XEN1101 in other neurological indications;
- XEN496 (active ingredient ezogabine) is a Kv7 potassium channel modulator being developed by Xenon. The U.S. Food and Drug Administration, or FDA, has granted orphan drug designation, or ODD, for XEN496 as a treatment of KCNQ2 developmental and epileptic encephalopathy, or KCNQ2-DEE. The FDA previously indicated that it is acceptable to study XEN496 in infants and children up to four years old, and that a single, small pivotal trial may be considered adequate in order to demonstrate XEN496's efficacy in KCNQ2-DEE, provided the study shows evidence of a clinically meaningful benefit in patients with the intended indication. In December 2019, we filed an IND application with the FDA related to a pharmacokinetic, or PK, study testing our proprietary pediatric formulation of ezogabine (XEN496) in healthy adult volunteers. In January 2020, we received permission to proceed with the study, which is now ongoing and expected to be completed in the first quarter of 2020. In parallel, we are corresponding with the FDA regarding the Phase 3 clinical trial design and we expect feedback early in the second quarter of 2020. A Phase 3 clinical trial in KCNQ2-DEE is expected to start in 2020; and
- XEN007 (active ingredient flunarizine) is a CNS-acting calcium channel modulator that modulates Cav2.1 and T-type calcium channels. Other reported mechanisms include dopamine, histamine and serotonin inhibition. A physician-led, Phase 2 proof-of-concept study has recently been initiated to examine the potential clinical efficacy, safety, and tolerability of XEN007 as an adjunctive treatment in pediatric patients diagnosed with treatment-resistant childhood absence epilepsy. Results from this Phase 2 investigator-led proof-of-concept study are expected in 2020. Depending on the results from the study, CAE may represent a potential orphan indication for future development of XEN007.

#### Partnered Programs

- In December 2019, we entered into a license and collaboration agreement with Neurocrine Biosciences, Inc., or Neurocrine Biosciences, to develop treatments for epilepsy. Neurocrine Biosciences has an exclusive license to XEN901, now known as NBI-921352, a clinical stage selective Nav1.6 sodium channel inhibitor for epilepsy. In addition, Neurocrine Biosciences gained an exclusive license to pre-clinical compounds for development, including selective Nav1.6 inhibitors and dual Nav1.2/1.6 inhibitors. The agreement also included a multi-year research collaboration to discover, identify and develop additional novel Nav1.6 and Nav1.2/1.6 inhibitors. Neurocrine Biosciences anticipates filing an IND application with the FDA in mid-2020 in order to start a Phase 2 clinical trial in SCN8A-DEE developmental and epileptic encephalopathy patients in the second half of 2020. We are eligible to receive up to \$25 million upon the FDA acceptance of an IND for NBI-921352, with 55% of the amount in the form of an equity investment in our common shares at a 15% premium to our 30-day trailing volume weighted average price at that time; and

- In September 2019, we entered into an agreement with Flexion Therapeutics, Inc., or Flexion, that provides Flexion with the global rights to develop and commercialize XEN402, a Nav1.7 inhibitor. Flexion’s pre-clinical program, known as FX301, consists of XEN402 formulated for extended release from a thermosensitive hydrogel. The initial development of FX301 is intended to support administration as a peripheral nerve block for control of post-operative pain. Flexion has indicated that it anticipates initiating FX301 clinical trials in 2021.

We have funded our operations through the sale of equity securities, funding received from our licensees and collaborators, debt financing and, to a lesser extent, government funding. For the year ended December 31, 2019, we recognized revenue of \$6.8 million, consisting primarily of funding and payments from our collaborators. We did not recognize any revenue for the year ended December 31, 2018. We do not expect to have sustained profitability for the foreseeable future. We had net losses of \$41.6 million for the year ended December 31, 2019 and an accumulated deficit of \$249.7 million as of December 31, 2019, from expenses incurred in connection with our research programs and from general and administrative costs associated with our operations.

We have not generated any significant royalty revenue from product sales, and do not otherwise anticipate generating revenue from product sales for the foreseeable future, if ever. We expect that our revenue in the near term will be substantially dependent on our collaboration agreements. Given the uncertain nature of clinical development of our current and future product candidates and the commercialization of current and future products, we cannot predict when or whether we will receive further milestone payments under our current or future collaboration agreements or whether we will be able to report either revenue or net income in future years.

We expect to continue to incur significant expenses and operating losses for at least the next 12 to 24 months. We anticipate that our expenses will increase as we:

- continue our research and pre-clinical and clinical development of our product candidates either from our internal research efforts or through acquiring or in-licensing other product candidates or technologies;
- seek regulatory and marketing approvals for any of our product candidates that successfully complete clinical trials;
- make milestone and other payments under our in-license or other agreements;
- maintain, protect and expand our intellectual property portfolio;
- attract, hire and retain skilled personnel; and
- create additional infrastructure to support our operations and otherwise.

## Recent Developments

In January 2020, we entered into an underwriting agreement with Jefferies, Stifel and Guggenheim Securities, LLC, relating to an underwritten public offering of 3,750,000 common shares at a public offering price of \$16.00 per common share, and granted the underwriters an option for a period of 30 days to purchase up to an additional 562,500 common shares. The public offering was completed on January 27, 2020 and the closing relating to the underwriters’ exercise in full of their option to purchase additional common shares was held on February 14, 2020. We sold an aggregate of 4,312,500 common shares for net proceeds of \$64.9 million, net of underwriting discounts and commissions, but before offering expenses.

## Financial Operations Overview

### *Revenue*

To date, our revenue has been primarily derived from collaboration and licensing agreements as well as, to a lesser extent, government funding. We have not generated any significant royalty revenue from product sales, and do not otherwise anticipate generating revenue from product sales for the foreseeable future, if ever. Over our history, we have entered into several collaboration agreements and our current collaboration and licensing agreements are described in “Business – Strategic Alliances” and “Note 13” of the consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

The following table is a summary of revenue recognized from our current collaboration and licensing agreements for the years ended December 31, 2019 and 2018 (in thousands):

	Year Ended December 31,	
	2019	2018
<b>Neurocrine Biosciences:</b>		
Recognition of the transaction price	\$ 2,881	\$ —
Research and development services	448	—
<b>Flexion:</b>		
Recognition of upfront payment	3,000	—
Milestone payment	500	—
<b>Total collaboration revenue</b>	<b>6,829</b>	<b>—</b>

Pursuant to the terms of our license and collaboration agreement with Neurocrine Biosciences, we received an upfront cash payment of \$30.0 million and a \$20.0 million equity investment in our common shares. The equity investment was measured at fair value on the date of issuance and the resulting premium, together with the upfront cash payment, is the transaction price of the arrangement for allocation to the performance obligations. The allocation was based on the relative estimated standalone selling prices of each obligation under the agreement including: (i) an exclusive license to XEN901 with associated technology and know-how transfer, (ii) an exclusive license to pre-clinical compounds for development, XEN393, XPC'535 and XPC'391, collectively referred to as the development track candidates, or the DTCs, with associated know-how transfer, and (iii) development services under the initial development program for the DTCs. In the year ended December 31, 2019, we recognized \$2,881 of transaction price allocated to performance obligations (i) and (ii). These performance obligations are being recognized over a ten month period from December 2019 to September 2020 which is the expected period to complete the delivery of the licenses and transfer of the relevant technology and know-how. Research and development services are recognized into revenue at fair market value as the services are rendered.

Pursuant to the terms of our agreement with Flexion, we received an upfront payment of \$3.0 million. We determined that the deliverables under this agreement should be considered a single performance obligation. As a result, the upfront payment was fully recognized as revenue in September 2019 upon the transfer of the global rights to develop and commercialize XEN402. In addition, we are also eligible for various milestone payments, of which \$0.5 million for the initiation of the first GLP toxicology study was recognized as revenue in September 2019 as the outcome is considered highly probable of occurring.

As our other internal and partnered products are in various stages of clinical and pre-clinical development, we do not expect to generate any revenue from product sales for at least the next several years. We expect that any revenue for the next several years will be derived from milestone payments and research and development funding under our current collaboration agreements and any additional collaboration agreements that we may enter into in the future. We cannot provide any assurance as to the extent or timing of future milestone payments or royalty payments or that we will receive any future payments at all.

We expect that any revenue we generate will fluctuate quarter to quarter as a function of the timing and amount of milestones and other payments from our existing collaborations and any future collaborations.

As of December 31, 2019, we have recorded \$30.5 million of deferred revenue from upfront payments received under our license and collaboration agreement with Neurocrine Biosciences.

### **Operating Expenses**

The following table summarizes our operating expenses for the years ended December 31, 2019 and 2018 (in thousands):

	Year Ended December 31,	
	2019	2018
Research and development	\$ 38,845	\$ 23,634
General and administrative	10,803	8,406
Buy-out of future milestones and royalties	—	6,000
<b>Total operating expenses</b>	<b>\$ 49,648</b>	<b>\$ 38,040</b>

### **Research and Development Expenses**

Research and development expenses represent costs incurred to conduct research and development of our proprietary product candidates, including any acquired or in-licensed product candidates or technology.

Research and development expenses consist of costs incurred in performing research and development activities, including salary, related benefits and stock-based compensation for employees engaged in scientific research and development, third-party contract costs relating to research, formulation, process development and manufacturing, pre-clinical studies and clinical trial activities, third-party acquisition, license and collaboration fees, laboratory consumables and allocated facility-related and information technology costs.

Project-specific expenses reflect costs directly attributable to our clinical development candidates for which we have incurred significant expenses. All remaining research and development expenses are reflected in pre-clinical, discovery and other program expenses. At any given time, we have several active early-stage research and drug discovery programs. Our personnel and infrastructure are typically deployed over multiple projects and are not directly linked to any individual internal early-stage research or drug discovery program. Therefore, we do not maintain financial information for our internal early-stage research and internal drug discovery programs on a project-specific basis.

We expense all research and development costs as incurred. We expect that our research and development expenses will increase in the future as we advance our proprietary product candidates through clinical development, advance our internal drug discovery programs into pre-clinical development and continue our early-stage research. The increase in expense will likely include added personnel and third-party contracts related to research, formulation, process development and manufacturing, pre-clinical studies and clinical trial activities as well as third-party acquisition, license and collaboration fees and laboratory consumables.

Clinical development timelines, likelihood of regulatory approval, and commercialization and associated costs are uncertain, difficult to estimate, and can vary significantly. We anticipate determining which research and development projects to pursue as well as the level of funding available for each project based on the scientific research and pre-clinical and clinical results of each product candidate and related regulatory action. We expect our research and development expenses to continue to represent our largest category of operating expenses for at least the next 12 to 24 months.

#### ***General and Administrative Expenses***

General and administrative expenses consist primarily of salary, related benefits and stock-based compensation of our executive, finance, legal, business development and administrative functions, travel expenses, allocated facility-related and information technology costs not otherwise included in research and development expenses, director compensation, director's and officer's insurance premiums, investor relations costs and professional fees for auditing, tax and legal services, including legal expenses for intellectual property protection.

We expect that general and administrative expenses will increase in the future as we expand our operating activities to support increased research and development activities.

#### ***Buy-out of future milestones and royalties***

In September 2018, we entered into a milestone and royalty buy-out agreement with Valeant Pharmaceuticals Luxembourg S.a.r.l. and Valeant Pharmaceuticals Ireland Limited, or together, Bausch Health, under which all potential clinical development, regulatory and sales-based milestones and royalties on commercial sales with respect to XEN1101 that may become owed to Bausch Health were terminated in exchange for a one-time payment of \$6.0 million which was expensed in the period.

#### ***Other Income (Expense)***

*Interest Income.* Interest income consists of income earned on our cash and investment balances. We anticipate that our interest income will continue to fluctuate depending on our cash and investment balances and interest rates.

*Interest Expense.* Interest expense consists of accrual of the final payment fee, amortization of debt discounts, and interest charged on our borrowings with Silicon Valley Bank, or the Bank, which accrue interest at a floating per annum rate of 0.5% above the prime rate.

*Foreign Exchange Gain (Loss).* Net foreign exchange gains and losses consisted of gains and losses from the impact of foreign exchange fluctuations on our monetary assets and liabilities that are denominated in currencies other than the U.S. dollar (principally the Canadian dollar). We will continue to incur substantial expenses in Canadian dollars and will remain subject to risks associated with foreign currency fluctuations.

*Gain on Termination of Collaboration Agreement.* In March 2018, we entered into a termination agreement terminating by mutual agreement the collaborative development and license agreement dated December 7, 2012, as amended, with Teva Pharmaceuticals International GmbH and Teva Canada Limited, or together Teva, that included the cancellation of 1,000,000 of our common shares owned by Teva. We recorded a one-time gain of \$4.4 million on the termination of the collaboration agreement, net of direct costs incurred in connection with the termination and cancellation of the common shares.

## Critical Accounting Policies and Significant Judgments and Estimates

Our management's discussion and analysis of our financial condition and results of operations is based on our consolidated financial statements, which have been prepared in conformity with generally accepted accounting principles in the U.S., or U.S. GAAP. The preparation of our consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the revenue and expenses incurred during the reported periods. We base estimates on our historical experience, known trends and various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

The significant accounting policies that we believe to be most critical in fully understanding and evaluating our financial results are revenue recognition, research and development costs and stock-based compensation. For additional information, see note 3 of the consolidated financial statements included in Part II, Item 8 of this report.

### *Revenue recognition:*

Revenue recognition is a critical accounting estimate due to the magnitude and nature of the revenues we receive.

Our primary sources of revenue are derived from non-refundable upfront payments, funding for research and development services, milestone payments, and royalties under various collaboration agreements.

In contracts where we have more than one performance obligation to provide our customer with goods or services, each performance obligation is evaluated to determine whether it is distinct. The consideration under the contract is then allocated between the distinct performance obligations based on their respective relative standalone selling prices. The estimated standalone selling price of each deliverable reflects our best estimate of what the selling price would be if the deliverable was regularly sold on a standalone basis and is determined by reference to market rates for the good or service when sold to others or by using an adjusted market assessment approach if selling price on a standalone basis is not available. We generally recognize revenue from non-refundable upfront payments over the estimated term of the performance obligation or period in which the underlying benefit is transferred to the customer. We evaluate the measure of progress each reporting period and, if necessary, adjust the measure of performance and related revenue recognition.

The consideration allocated to each distinct performance obligation is recognized as revenue when control is transferred to our customer for the related goods or services. Consideration in exchange for research and development services performed by us on behalf of the licensee is recognized upon performance of such activities at rates consistent with prevailing market rates. Consideration associated with at-risk substantive performance milestones, including sales-based milestones, is recognized as revenue when we determine it is probable that a significant reversal of the cumulative revenue recognized will not occur. At the end of each subsequent reporting period, we re-evaluate the probability of achievement of such milestones, and if necessary, adjust our estimate of the overall transaction price. Sales-based royalties received in connection with licenses of intellectual property are subject to a specific exception in the revenue standards, whereby the consideration is not included in the transaction price and recognized in revenue until the customer's subsequent sales or usages occur.

### *Research and development costs:*

Research and development costs is a critical accounting estimate due to the magnitude of and the many assumptions that are required to calculate third-party accrued and prepaid research and development expenses.

We incur development activity costs, such as pre-clinical costs, manufacturing costs and clinical trial costs paid to contract research organizations, investigators and other vendors who conduct certain product development activities on our behalf. The amount of expenses recognized in a period related to service agreements is based on estimates of the work performed using an accrual basis of accounting. These estimates are based on patient enrollment

, services provided and goods delivered, contractual terms and experience with similar contracts. We monitor these factors and adjust our estimates accordingly.

### *Stock-based compensation:*

Stock-based compensation is a critical accounting estimate due to the magnitude of and the many assumptions that are required to calculate stock-based compensation expense.

We grant stock options to employees, directors and officers pursuant to our stock option plans. Compensation expense is recorded using the fair value method. We calculate the fair value of stock options using the Black-Scholes option-pricing model which requires that certain assumptions, including the expected life of the option and expected volatility of the stock, be estimated at the time that the options are granted. The expected volatility is based on the historical volatility of our common shares calculated based on a period of time commensurate with the expected term assumption. The expected term of our stock options has been determined utilizing our available historical data and we recognize forfeitures as they occur. We amortize the fair value of stock options using the straight-line method over the vesting period of the options.

## Results of Operations

### Comparison of Years Ended December 31, 2019 and 2018

The following table summarizes the results of our operations for the years ended December 31, 2019 and 2018 together with changes in those items (in thousands):

	Year Ended December 31,		Change 2019 vs. 2018 Increase/(Decrease)
	2019	2018	
Revenue	\$ 6,829	\$ —	\$ 6,829
Research and development expenses	38,845	23,634	15,211
General and administrative expenses	10,803	8,406	2,397
Buy-out of future milestones and royalties	—	6,000	(6,000)
Other:			
Interest income	2,353	1,216	1,137
Interest expense	(1,434)	(1,394)	(40)
Foreign exchange gain (loss)	282	(701)	983
Gain on termination of collaboration agreement	—	4,398	(4,398)
Loss before income taxes	\$ (41,618)	\$ (34,521)	\$ (7,097)

### Revenue

We recognized revenue of \$6.8 million for the year ended December 31, 2019, whereas no revenue was recognized for the year ended December 31, 2018. In 2019, we recognized revenue of \$3.5 million in connection with our agreement with Flexion. Also in 2019, we recognized \$2.9 million in connection with the transfer of licenses and related technology and know-how under our license and collaboration agreement with Neurocrine Biosciences as well as \$0.4 million for research and development services.

### Research and Development Expenses

The following table summarizes research and development expenses for the years ended December 31, 2019 and 2018 together with changes in those items (in thousands):

	Year Ended December 31,		Change 2019 vs. 2018 Increase/(Decrease)
	2019	2018	
XEN496 expenses	\$ 4,052	\$ 1,469	\$ 2,583
XEN901 expenses (now known as NBI-921352)	8,922	5,363	3,559
XEN1101 expenses	16,254	7,883	8,371
Pre-clinical, discovery and other program expenses	9,617	8,919	698
Total research and development expenses	\$ 38,845	\$ 23,634	\$ 15,211

Research and development expenses were \$38.8 million for the year ended December 31, 2019, compared to \$23.6 million for the year ended December 31, 2018. The increase of \$15.2 million was primarily attributable to increased spending on our clinical development product candidates and, to a lesser extent, increased spending on our pre-clinical, discovery and other internal program expenses. Pursuant to the terms of our license and collaboration agreement with Neurocrine Biosciences entered into in December 2019, Neurocrine Biosciences will fund all future clinical development costs associated with the development of product candidates under the collaboration including XEN901, now known as NBI-921352, with the exception of a portion of certain near term manufacturing costs.

### General and Administrative Expenses

The following table summarizes general and administrative expenses for the years ended December 31, 2019 and 2018 together with changes in those items (in thousands):

	Year Ended December 31,		Change 2019 vs. 2018 Increase/(Decrease)
	2019	2018	
General and administrative expenses	\$ 10,803	\$ 8,406	\$ 2,397

General and administrative expenses were \$10.8 million for the year ended December 31, 2019, compared to \$8.4 million for the year ended December 31, 2018. The increase of \$2.4 million was primarily attributable to increased salaries and benefits, legal expenses for intellectual property protection, business development expenses and recruitment fees.

### Other Operating Expenses

The following table summarizes other operating expenses for the years ended December 31, 2019 and 2018 together with changes in those items (in thousands):

	Year Ended December 31,		Change 2019 vs. 2018 Increase/(Decrease)
	2019	2018	
Buy-out of future milestones and royalties	\$ —	\$ 6,000	\$ (6,000)

Other operating expenses decreased by \$6.0 million for the year ended December 31, 2019, as compared to the year ended December 31, 2018. The decrease is due to a one-time payment of \$6.0 million to Bausch Health made in September 2018 for the buy-out of all future milestone payments and royalties owed to Bausch Health with respect to the XEN1101 program.

### Other Income

The following table summarizes our other income for the years ended December 31, 2019 and 2018 together with changes in those items (in thousands):

	Year Ended December 31,		Change 2019 vs. 2018 Increase/(Decrease)
	2019	2018	
Other income:	\$ 1,201	\$ 3,519	\$ (2,318)

Other income decreased by \$2.3 million for the year ended December 31, 2019, as compared to the year ended December 31, 2018. The decrease in other income was primarily driven by a \$4.4 million gain on the termination of the collaboration agreement with Teva in March 2018, partially offset by a change in foreign exchange gains and losses and interest income earned on our cash and investment balances. We recorded a foreign exchange gain of \$0.3 million for the year ended December 31, 2019 as compared to a \$0.7 million foreign exchange loss for the same period in 2018, largely due to a 5% increase as compared to an 8% decrease in the value of the Canadian dollar, respectively. We also recognized an increase of \$1.1 million in interest income as a result in an increase in our average cash and investment balances for the year ended December 31, 2019 as compared to the same period in 2018.

### Liquidity and Capital Resources

To date, we have financed our operations primarily through funding received from collaboration and license agreements, private placements of our common and preferred shares, public offerings of our common shares, debt financing and, to a lesser extent, government funding. As of December 31, 2019, we had cash and cash equivalents and marketable securities of \$141.4 million.

We have incurred significant operating losses since inception. We had a \$41.6 million net loss for the year ended December 31, 2019 and an accumulated deficit of \$249.7 million from inception through December 31, 2019. We expect to continue to incur significant expenses in excess of our revenue and expect to incur operating losses over the next several years. Our net losses may fluctuate significantly from quarter to quarter and year to year. We expect to continue to incur significant expenses and operating losses for the foreseeable future as we continue our research and pre-clinical and clinical development of our product candidates; expand the scope of our current studies for our product candidates; initiate additional pre-clinical, clinical or other studies for our product candidates, including under our collaboration agreements; change or add manufacturers or suppliers and manufacture drug supply and drug products for clinical trials and commercialization; seek regulatory and marketing approvals for any of our product candidates that successfully complete clinical studies; seek to identify, evaluate and validate additional product candidates; acquire or in-license other product candidates and technologies; make milestone or other payments under our product acquisition and in-license agreements, including, without limitation, payments to the Memorial University of Newfoundland, 1st Order Pharmaceuticals, Inc., and other third parties; maintain, protect and expand our intellectual property portfolio; attract and retain skilled personnel; establish a sales, marketing and distribution infrastructure to commercialize any products for which we or one of our collaborators may obtain marketing approval, and maintain commercial rights; create additional infrastructure to support our operations and our product development and planned future commercialization efforts; and experience any delays or encounter issues with any of the above.

Until such time as we can generate substantial product revenue, if ever, we expect to finance our cash needs through a combination of collaboration agreements and equity or debt financings. For example, we entered into an underwriting agreement with Jefferies LLC, or Jefferies, Stifel, Nicolaus & Company, Incorporated, or Stifel and Guggenheim Securities, LLC, relating to an underwritten public offering of 3,750,000 common shares at a public offering price of \$16.00 per common share, and granted the underwriters an option for a period of 30 days to purchase up to an additional 562,500 common shares. The public offering was completed in January 2020 and the underwriters' option was exercised in full in February 2020. We issued an aggregate of 4,312,500 common shares and raised total net proceeds of \$64.9 million, net of underwriting discounts and commissions, but before offering expenses. In December 2019, pursuant to the terms of our license and collaboration agreement with Neurocrine Biosciences, we received an upfront cash payment of \$30.0 million and we issued 1,408,847 common shares to Neurocrine Biosciences for an aggregate purchase price of \$20.0 million. Further, in November 2019, we entered into an at-the-market equity offering sales agreement, or the Sales Agreement, with Jefferies and Stifel, to sell our common shares having aggregate sales proceeds of up to \$50.0 million, from time to time, through an "at-the-market" equity offering program under which Jefferies and Stifel acted as sales agent. As of January 14, 2020, we had sold an aggregate of 3,252,330 common shares for net proceeds of \$48.8 million, net of commissions paid, but excluding estimated transaction expenses. In addition, during the year ended December 31, 2018, we raised \$103.2 million, net of commissions paid, but excluding estimated transaction expenses through a combination of "at-the-market" equity offerings and an underwritten public offering, selling an aggregate of 9,540,000 common shares. During the year ended December 31, 2018, we also entered into an amended and restated loan and security agreement with Silicon Valley Bank, or the Bank, providing for a term loan to us with an aggregate principal amount of \$15.5 million.

Except for any obligations of our collaborators to make milestone payments and research and development funding under our agreements with them, we do not have any committed external sources of capital. To the extent that we raise additional capital through the future sale of equity or debt, the ownership interest of our shareholders will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect the rights of our existing shareholders. If we raise additional funds through collaboration agreements in the future, we may have to relinquish valuable rights to our technologies, future revenue streams or product candidates or grant licenses on terms that may not be favorable to us. If we are unable to raise additional funds through equity or debt financings when needed, we may be required to delay, limit, reduce or terminate our product development or future commercialization efforts or grant rights to develop and market product candidates that we would otherwise prefer to develop and market ourselves.

Our future capital requirements are difficult to forecast and will depend on many factors, including:

- the number and characteristics of the future product candidates we pursue either from our internal research efforts or through acquiring or in-licensing other product candidates or technologies;
- the scope, progress, results and costs of independently researching and developing any of our future product candidates, including conducting pre-clinical research and clinical trials;
- whether our existing collaborations continue to generate substantial milestone payments and, ultimately, royalties on future approved products for us;
- the timing of, and the costs involved in, obtaining regulatory approvals for any future product candidates we develop independently;
- the timing and magnitude of potential milestone payments and royalties under our product acquisition and in-license agreements;
- the cost of commercializing any future products we develop independently that are approved for sale;

- the cost of manufacturing our future product candidates and products, if any;
- our ability to maintain existing collaborations and to establish new collaborations, licensing or other arrangements and the financial terms of such arrangements;
- the costs of preparing, filing, prosecuting, maintaining, defending and enforcing patents, including litigation costs and the outcome of such litigation; and
- the timing, receipt and amount of sales of, or royalties on our future products, if any.

Based on our research and development plans and our timing expectations related to the progress of our programs, we expect that our existing cash and cash equivalents and marketable securities as of the date of this report will enable us to fund our operating expenses and capital expenditure requirements for at least the next 12 months. We have based this estimate on assumptions that may prove to be wrong, and we could use our capital resources sooner than we expect. Additionally, the process of testing drug candidates in clinical trials is costly, and the timing of progress in these trials remains uncertain.

### Cash Flows

The following table shows a summary of our cash flows for the years ended December 31, 2019 and 2018 (in thousands):

	Year Ended December 31,	
	2019	2018
Net cash used in operating activities	\$ (4,632)	\$ (34,724)
Net cash used in investing activities	(66,291)	(28,987)
Net cash provided by financing activities	27,518	111,591

### Operating Activities

Net cash used in operating activities totaled \$4.6 million in 2019 as compared to \$34.7 million in 2018. The decrease in cash used in operating activities was primarily related to the \$30.0 million upfront cash consideration received in December 2019 under the license and collaboration agreement with Neurocrine Biosciences and the associated premium of \$3.3 million on the equity investment in our common shares, the one-time payment in September 2018 of \$6.0 million to Bausch Health for the buy-out of all future milestone payments and royalties owed to Bausch Health with respect to the XEN1101 program, and the \$3.0 million upfront consideration received in September 2019 under the agreement with Flexion, partially offset by an increase in research and development expenses for the year ended December 31, 2019 compared to the same period in 2018.

### Investing Activities

Net cash used in investing activities totaled \$66.3 million in 2019 as compared to net cash used in investing activities of \$29.0 million in 2018. The change in cash used in investing activities was driven by an increase in purchases of marketable securities, net of redemptions.

### Financing Activities

Net cash provided by financing activities totaled \$27.5 million in 2019 as compared to \$111.6 million in 2018. The decrease in cash provided by financing activities was driven by a decrease in net proceeds from the issuance of common shares as well as net proceeds of \$8.5 million under the second tranche of our loan in June 2018.

### Contractual Obligations and Commitments

The following table summarizes our significant contractual obligations as of December 31, 2019 (in thousands):

Contractual Obligations	Total	Less Than 1 Year	1 To 3 Years	3 To 5 Years	More Than 5 Years
Operating leases (1)	\$ 1,411	\$ 650	\$ 761	\$ —	\$ —
Term loan (2)	\$ 15,500	\$ 4,650	\$ 10,850	\$ —	\$ —
Total contractual obligations	\$ 16,911	\$ 5,300	\$ 11,611	\$ —	\$ —

- (1) Represents future minimum lease payments under an operating lease in effect as of December 31, 2019 for our current facility in Burnaby, British Columbia, Canada.

- (2) Excluding expected interest payments of \$0.7 million (less than one year) and \$0.5 million (one to three years), based on the prime rate plus 0.5% margin at December 31, 2019. Also excluded is the final payment fee of \$1.0 million which represents 6.5% of the principal amount.

### **Term Loan**

In August 2018, we entered into an amended and restated loan and security agreement with the Bank, or Amended and Restated Loan Agreement, providing for a term loan, or Term Loan, to us with an aggregate principal amount of \$15.5 million, which was used to repay in full outstanding borrowings of \$12.0 million under a prior loan agreement with the Bank and a payment of \$0.5 million, which represented the current portion of the final payment fee due under such prior loan agreement, as well as for working capital and other general corporate purposes, including the advancement of our clinical development programs.

The Term Loan accrues interest at a floating per annum rate of 0.5% above the prime rate, which is payable monthly commencing in September 2018. The Term Loan is interest-only until March 31, 2020, followed by 30 equal monthly installments of principal plus interest, maturing on September 1, 2022. In addition, we are required to pay a final payment fee of 6.5% of the Term Loan on the date on which the term loan is prepaid, paid or becomes due and payable in full.

We may prepay all, but not less than all, of the Term Loan subject to a prepayment fee of \$0.3 million, which represents the deferred portion of the final payment fee due under the Modified Loan Agreement, plus 3.0% if prepaid prior to the first anniversary of the effective date of the Amended and Restated Loan Agreement, 2.0% if prepaid on or after the first anniversary, but prior to the second anniversary, or 1.0%, if prepaid on or after the second anniversary but prior to the maturity date. As security for our obligations under the Amended and Restated Loan Agreement, we granted the Bank a first priority security interest on substantially all of our assets except our intellectual property and subject to certain other exceptions.

The Amended and Restated Loan Agreement contains customary representations and warranties, events of default (including an event of default upon the occurrence of a material impairment on the Bank's security interest over the collateral, and a material adverse change in our company) and affirmative and negative covenants, including, among others, covenants that limit or restrict our ability to incur indebtedness, grant liens, merge or consolidate, dispose of assets, make investments, make acquisitions, enter into certain transactions with affiliates, engage in any new line of business, pay dividends or make distributions, or repurchase stock, in each case subject to certain exceptions. Upon the occurrence and during the continuance of an event of default, a default interest rate will apply that is 5.0% above the otherwise applicable interest rate.

In connection with the Amended and Restated Loan Agreement, we issued a warrant to the Bank to purchase 40,000 of our common shares at a price per common share of \$9.79. The warrant is immediately exercisable, has a 10-year term and contains a cashless exercise provision.

### **Other Commitments**

The contractual obligations table above excludes the following material contractual commitments:

In August 2015, we entered into a priority access agreement with Medpace Inc., or Medpace, for the provision of certain clinical development services. Under the terms of the agreement, we committed to using Medpace non-exclusively for clinical development services over the five year term of the agreement. In consideration for priority access to Medpace resources and preferred service rates, we committed to \$7.0 million of services over the term of the agreement, \$3.0 million of services have been received to date and \$4.0 million remains committed as at December 31, 2019. If we do not meet the commitment to retain Medpace for \$7.0 million of services during the term of the agreement, we agreed to give Medpace the exclusive right to perform all of our subsequent outsourced clinical development work until such \$7.0 million commitment has been satisfied, subject to the availability of appropriate Medpace resources and reasonable service rates. If we decide not to retain Medpace for the provision of clinical development services, we may satisfy our obligations under the priority access agreement by paying Medpace an amount equal to half of the unsatisfied portion of the \$7.0 million minimum commitment.

In March 2017, we entered into a license, manufacture and supply agreement with a pharmaceutical contract manufacturing organization for the access and use of certain regulatory documents as well as for the manufacture and supply of clinical and commercial drug product to support the development of XEN007. Under the terms of the agreement, we will be required to pay a low single-digit percentage royalty on net sales of any products developed and commercialized under the agreement.

In April 2017, we acquired XEN1101 (previously known as 1OP2198) from 1st Order Pharmaceuticals, Inc., or 1st Order, pursuant to an asset purchase agreement. 1st Order previously acquired 1OP2198 from an affiliate of Bausch Health, and assumed certain financial responsibilities under that agreement. In September 2018, we entered into a milestone and royalty buy-out agreement with Bausch Health under which all potential clinical development, regulatory and sales-based milestones and royalties on commercial sales with respect to XEN1101 that may become owed to Bausch Health under the asset purchase agreement were terminated in exchange for a one-time payment of \$6.0 million which was expensed in the period. Future potential payments to 1st Order include \$0.5 million in clinical development milestones, up to \$6.0 million in regulatory milestones, and \$1.5 million in other milestones that may be payable pre-commercially. There are no royalty obligations to 1st Order.

In July 2017, we entered into a license agreement with a pharmaceutical company for the access and use of certain regulatory documents to support the development of XEN007. Future potential payments include \$2.0 million in clinical development milestones, up to \$7.0 million in regulatory milestones, plus a low-to-mid single-digit percentage royalty on net sales of any products developed and commercialized under the agreement.

In July 2018, we amended our collaborative research and license agreement with Genentech to provide us with greater flexibility in developing additional compounds that target Nav1.6. Pursuant to the amendment, we obtained a non-exclusive, irrevocable, perpetual, world-wide, sublicensable license under the know-how forming part of the Genentech intellectual property developed under the Nav1.7 collaboration that is necessary or useful to make, use, sell, offer for sale, and import compounds from our Nav1.6 program that are above a certain potency on Nav1.7 and were conceived prior to a certain date and products containing those compounds. Our license from Genentech includes commercialization rights but we are restricted from developing or commercializing our Nav1.6 compounds below a certain potency on Nav1.7 and conceived prior to a certain date in the field of epilepsy and any of our Nav1.6 compounds conceived prior to a certain date, regardless of their potency on Nav1.7, in the field of pain. In exchange for the rights granted to us under this amendment, Genentech is eligible to receive a low single-digit percentage, tiered royalty on net sales of our Nav1.6 compounds conceived prior to a certain date, including XEN901 (now known as NBI-921352), for a period of ten years from first commercial sale on a country-by-country basis. In accordance with our license and collaboration agreement with Neurocrine Biosciences, we remain solely responsible for all payments to Genentech with respect to certain Nav1.6 compounds, including NBI-921352, licensed to Neurocrine Biosciences. Pursuant to the amendment, we granted Genentech a royalty-free, non-exclusive, world-wide license under our Nav1.6 intellectual property to make, use, sell, offer for sale and import compounds below a certain potency on Nav1.7 and products containing those compounds for all uses and indications except epilepsy.

#### **Inflation**

We do not believe that inflation has had a material effect on our business, financial condition or results of operations in the last three fiscal years.

#### **Off-Balance Sheet Arrangements**

We do not engage in any off-balance sheet financing activities. We do not have any interest in entities referred to as variable interest entities, which include special purposes entities and other structured finance entities.

#### **Related Party Transactions**

For a description of our related party transactions, see “Certain Relationships and Related Transactions, and Director Independence.”

#### **Outstanding Share Data**

As of March 5, 2020, we had 34,956,272 common shares issued and outstanding and outstanding stock options to purchase an additional 3,439,693 common shares. In addition, as of March 5, 2020, we had 1,016,000 Series 1 Preferred Shares issued and outstanding. The Series 1 Preferred Shares are convertible into common shares on a one-for-one basis subject to the holder, together with its affiliates, beneficially owning no more than 9.99% of the total number of common shares issued and outstanding immediately after giving effect to such conversion, or the Beneficial Ownership Limitation. The holder may reset the Beneficial Ownership Limitation to a higher or lower number, not to exceed 19.99% of the total number of common shares issued and outstanding immediately after giving effect to such conversion, upon providing written notice to us which will be effective 61 days after delivery of such notice. The holders of the Series 1 Preferred Shares are entitled to vote together with the common shares on an as-converted basis and as a single class, subject in the case of each holder of the Series 1 Preferred Shares to the Beneficial Ownership Limitation. The Series 1 Preferred Shares may be “restricted securities” as such term is defined under applicable Canadian securities laws, as any Series 1 Preferred Shares that are ineligible to be converted into common shares due to the Beneficial Ownership Limitation, measured as of a given record date that applies for a shareholder meeting or ability to act by written consent, shall be deemed to be non-voting securities. For additional information regarding our Series 1 Preferred Shares, see note 11d to our consolidated financial statements included in Part II, Item 8 of this report.

## **2019 Inducement Equity Incentive Plan**

In September 2019, our board of directors adopted the 2019 Inducement Equity Incentive Plan, or the Inducement Plan, and, subject to the adjustment provisions of the Inducement Plan, reserved 400,000 of our common shares for issuance pursuant to equity awards granted under the Inducement Plan.

The Inducement Plan was adopted without shareholder approval in accordance with the applicable Nasdaq Listing Rules. The Inducement Plan provides for the grant of equity-based awards, including share options, share appreciation rights, restricted share awards, restricted share unit awards and performance share awards, and its terms are substantially similar to the our 2014 Equity Incentive Plan, including with respect to treatment of equity awards in the event of a “merger” or “change of control” as defined under the Inducement Plan, but with such other terms and conditions intended to comply with the Nasdaq inducement award exception or to comply with the Nasdaq acquisition and merger exception. However, our 2014 Equity Incentive Plan permits certain exchange programs (which includes repricings) without shareholder approval, while the Inducement Plan requires shareholder approval for such exchange programs.

In accordance with the applicable Nasdaq Listing Rules, awards under the Inducement Plan may only be made to individuals not previously serving as our employees or non-employee directors (or following such individuals’ bona fide period of non-employment with us), as an inducement material to the individuals’ entry into employment with us, or, to the extent permitted by the applicable Nasdaq Listing Rules, in connection with a merger or acquisition.

## **Recent Accounting Pronouncements**

In November 2019, the Financial Accounting Standards Board, or FASB, issued Accounting Standards Update, or ASU, 2019-08, Compensation—Stock Compensation (Topic 718) and Revenue from Contracts with Customers (Topic 606): Codification Improvements—Share-Based Consideration Payable to a Customer. These amendments clarify that companies must measure and classify share-based payment awards to a customer following the guidance in Topic 718. A company will classify awards as liabilities or equity following the guidance in Topic 718, and measure them at their grant-date fair value. The awards will be recorded as a reduction to revenue or an expense based on the guidance in Topic 606. If a company intends to provide an award to a customer and the grant date has not occurred, the transaction price guidance in Topic 606 should be followed to estimate the fair value of the award. A company must adjust the fair value estimate each reporting date until a grant date is achieved and recognize changes in the grant-date fair value of an award as a result of changes in the expected outcome of a service or a performance condition as a reduction in the transaction price. If the terms of the award are modified after the grantee vests in the award and is no longer a customer, the award may be subject to other guidance. These amendments will be effective for fiscal years and interim periods within those fiscal years, beginning after December 15, 2019. We are currently evaluating the new guidance to determine the impact it will have on our consolidated financial statements.

In December 2019, the FASB issued ASU 2019-12, Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes. These amendments market targeted improvement to simplify accounting for income taxes, changes the accounting for certain income tax transactions and makes certain improvements to the codification. These amendments will be effective for fiscal years and interim periods within those fiscal years, beginning after December 15, 2020 with early adoption permitted. We are currently evaluating the new guidance to determine the impact it will have on our consolidated financial statements.

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

As a smaller reporting company, we are not required to provide the information requested by this item pursuant to Item 301 of Regulation S-K.

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

**XENON PHARMACEUTICALS INC.**

Index to Consolidated Financial Statements

Year ended December 31, 2019

	<b>Index</b>
<a href="#"><u>Reports of Independent Registered Public Accounting Firm</u></a>	74
<a href="#"><u>Consolidated Balance Sheets as of December 31, 2019 and 2018</u></a>	76
<a href="#"><u>Consolidated Statements of Operations and Comprehensive Loss for the years ended December 31, 2019 and 2018</u></a>	77
<a href="#"><u>Consolidated Statements of Shareholders' Equity for the years ended December 31, 2019 and 2018</u></a>	78
<a href="#"><u>Consolidated Statements of Cash Flows for the years ended December 31, 2019, and 2018</u></a>	79
<a href="#"><u>Notes to Consolidated Financial Statements</u></a>	80

## Report of Independent Registered Public Accounting Firm

To the Shareholders and Board of Directors  
Xenon Pharmaceuticals Inc.:

### *Opinion on the Consolidated Financial Statements*

We have audited the accompanying consolidated balance sheets of Xenon Pharmaceuticals Inc. (the Company) as of December 31, 2019 and 2018, the related consolidated statements of operations and comprehensive loss, shareholders' equity, and cash flows for each of the years in the two-year period ended December 31, 2019, and the related notes (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2019 and 2018, and the results of its operations and its cash flows for each of the years in the two-year period ended December 31, 2019, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2019, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission, and our report dated March 9, 2020 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

### *Change in Accounting Principle*

As discussed in Note 4 to the consolidated financial statements, the Company has changed its accounting policies for leases due to the adoption of ASU 2016-02 – Leases.

### *Basis for Opinion*

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ KPMG LLP

Chartered Professional Accountants

We have served as the Company's auditor since 1999.

Vancouver, Canada

March 9, 2020

## Report of Independent Registered Public Accounting Firm

To the Shareholders and Board of Directors  
Xenon Pharmaceuticals Inc.:

### *Opinion on Internal Control Over Financial Reporting*

We have audited Xenon Pharmaceuticals Inc.'s (the Company) internal control over financial reporting as of December 31, 2019, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2019, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 31, 2019 and 2018, the related consolidated statements of operations and comprehensive loss, shareholders' equity, and cash flows for each of the years in the two-year period ended December 31, 2019, and the related notes (collectively, the consolidated financial statements), and our report dated March 9, 2020 expressed an unqualified opinion on those consolidated financial statements.

### *Basis for Opinion*

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Annual Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

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

### *Definition and Limitations of Internal Control Over Financial Reporting*

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

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

/s/ KPMG LLP

Chartered Professional Accountants

Vancouver, Canada  
March 9, 2020

**XENON PHARMACEUTICALS INC.**

## Consolidated Balance Sheets

(Expressed in thousands of U.S. dollars except share amounts)

	December 31, 2019	December 31, 2018
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 24,755	\$ 67,754
Marketable securities	116,603	51,552
Accounts receivable	813	151
Prepaid expenses and other current assets	2,695	1,875
	144,866	121,332
Operating lease right-of-use asset (note 8)	933	—
Property, plant and equipment, net (note 7)	1,660	991
Deferred tax assets (note 15)	238	105
<b>Total assets</b>	<b>\$ 147,697</b>	<b>\$ 122,428</b>
<b>Liabilities and shareholders' equity</b>		
Current liabilities:		
Accounts payable and accrued expenses (note 9)	8,818	4,119
Deferred revenue (note 13)	29,743	—
Operating lease liability (note 8)	168	—
Term loan (note 10)	4,650	—
	43,379	4,119
Deferred revenue, long-term (note 13)	709	—
Operating lease liability, long-term (note 8)	743	—
Term loan, long-term (note 10)	10,889	15,014
	\$ 55,720	\$ 19,133
<b>Shareholders' equity:</b>		
Preferred shares, without par value; unlimited shares authorized; issued and outstanding: 1,016,000 (December 31, 2018 - 1,016,000) (note 11)	\$ 7,732	\$ 7,732
Common shares, without par value; unlimited shares authorized; issued and outstanding: 28,139,228 (December 31, 2018 - 25,750,721) (note 11)	294,244	265,923
Additional paid-in capital	40,646	38,515
Accumulated deficit	(249,655)	(207,885)
Accumulated other comprehensive loss	(990)	(990)
	\$ 91,977	\$ 103,295
<b>Total liabilities and shareholders' equity</b>	<b>\$ 147,697</b>	<b>\$ 122,428</b>
Collaboration agreements (note 13)		
Commitments and contingencies (note 14)		
Subsequent events (note 17)		

The accompanying notes are an integral part of these consolidated financial statements.

**XENON PHARMACEUTICALS INC.**

## Consolidated Statements of Operations and Comprehensive Loss

(Expressed in thousands of U.S. dollars except share and per share amounts)

	Year Ended December 31,	
	2019	2018
Revenue (note 13):	\$ 6,829	\$ —
Operating expenses:		
Research and development	38,845	23,634
General and administrative	10,803	8,406
Buy-out of future milestones and royalties (note 14c)	—	6,000
	49,648	38,040
Loss from operations	(42,819)	(38,040)
Other income (expense):		
Interest income	2,353	1,216
Interest expense	(1,434)	(1,394)
Foreign exchange gain (loss)	282	(701)
Gain on termination of collaboration agreement (note 13c)	—	4,398
Loss before income taxes	(41,618)	(34,521)
Income tax recovery	23	24
Net loss and comprehensive loss	(41,595)	(34,497)
Net loss attributable to preferred shareholders	(1,568)	(2,881)
Net loss attributable to common shareholders	(40,027)	(31,616)
Net loss per common share (note 6):		
Basic and diluted	\$ (1.54)	\$ (1.63)
Weighted-average common shares outstanding (note 6):		
Basic and diluted	25,939,405	19,425,711

The accompanying notes are an integral part of these consolidated financial statements.

**XENON PHARMACEUTICALS INC.**  
Consolidated Statement of Shareholders' Equity  
(Expressed in thousands of U.S. dollars except share amounts)

	Convertible preferred shares		Common shares		Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive loss <sup>(1)</sup>	Total shareholders' equity
	Shares	Amount	Shares	Amount				
Balance as of December 31, 2017	—	\$ —	17,998,420	\$ 173,841	\$ 36,471	\$ (173,388)	\$ (990)	\$ 35,934
Net loss for the year						(34,497)		(34,497)
Issuance of common shares, net of issuance costs (note 11a)			9,540,000	102,850				102,850
Issued (cancelled) pursuant to exchange agreement (note 11d)	2,868,000	21,825	(2,868,000)	(21,825)				—
Conversion of preferred shares to common shares (note 11d)	(1,852,000)	(14,093)	1,852,000	14,093				—
Cancelled pursuant to termination of collaboration agreement (note 13c)			(1,000,000)	(4,470)				(4,470)
Stock-based compensation expense					2,652			2,652
Issued pursuant to exercise of stock options and warrants			228,301	1,434	(1,146)			288
Issuance of warrants					538			538
Balance as of December 31, 2018	1,016,000	\$ 7,732	25,750,721	\$ 265,923	\$ 38,515	\$ (207,885)	\$ (990)	\$ 103,295
Cumulative effect of accounting change (note 4a)						(175)		(175)
Net loss for the year						(41,595)		(41,595)
Issuance of common shares, net of issuance costs (note 11a)			2,214,490	27,396				27,396
Stock-based compensation expense					2,934			2,934
Issued pursuant to exercise of stock options			174,017	925	(803)			122
Balance as of December 31, 2019	1,016,000	\$ 7,732	28,139,228	\$ 294,244	\$ 40,646	\$ (249,655)	\$ (990)	\$ 91,977

(1) The accumulated other comprehensive loss is entirely related to historical cumulative translation adjustments from the application of U.S. dollar reporting when the functional currency of the Company was the Canadian dollar.

*The accompanying notes are an integral part of these consolidated financial statements.*

**XENON PHARMACEUTICALS INC.**  
Consolidated Statements of Cash Flows  
(Expressed in thousands of U.S. dollars)

	Year Ended December 31,	
	2019	2018
<b>Operating activities:</b>		
Net loss	\$ (41,595)	\$ (34,497)
Items not involving cash:		
Depreciation	429	586
Amortization of discount on term loan	525	284
Deferred income tax recovery	(133)	(105)
Stock-based compensation	2,924	2,625
Unrealized foreign exchange (gain) loss	(302)	646
Gain on termination of collaboration agreement (note 13c)	—	(4,398)
Changes in operating assets and liabilities:		
Accounts receivable	(653)	280
Prepaid expenses and other current assets	(820)	(928)
Accounts payable and accrued expenses	4,541	783
Deferred revenue	30,452	—
Net cash used in operating activities	(4,632)	(34,724)
<b>Investing activities:</b>		
Purchases of property, plant and equipment	(1,240)	(507)
Purchase of marketable securities	(140,494)	(77,002)
Proceeds from marketable securities	75,443	48,522
Net cash used in investing activities	(66,291)	(28,987)
<b>Financing activities:</b>		
Proceeds from issuance of refinanced term loan, net of issuance costs (note 10)	—	8,453
Issuance of common shares, net of issuance costs (note 11a)	27,396	102,850
Issuance of common shares pursuant to exercise of stock options	122	288
Net cash provided by financing activities	27,518	111,591
Effect of exchange rate changes on cash and cash equivalents	406	(612)
Increase (decrease) in cash and cash equivalents	(42,999)	47,268
Cash and cash equivalents, beginning of year	67,754	20,486
Cash and cash equivalents, end of year	\$ 24,755	\$ 67,754
<b>Supplemental disclosures:</b>		
Interest paid	\$ 917	\$ 561
Interest received	2,216	1,067
Cash paid for operating lease	634	624
<b>Supplemental disclosures of non-cash transactions:</b>		
Fair value of stock options and warrants exercised on a cashless basis	719	1,125
Issuance of preferred shares in exchange for common shares (note 11d)	—	21,825
Conversion of preferred shares to common shares (note 11d)	—	14,093
Termination of Teva agreement through cancellation of common shares (note 13c)	—	4,470

The accompanying notes are an integral part of these consolidated financial statements.

**1. Nature of the business:**

Xenon Pharmaceuticals Inc. (the "Company"), incorporated in 1996 under the predecessor to the Business Corporations Act (British Columbia) and continued federally in 2000 under the Canada Business Corporation Act, is a clinical stage biopharmaceutical company focused on developing innovative therapeutics to improve the lives of patients with neurological disorders. Building upon its extensive knowledge of human genetics and diseases caused by mutations in ion channels, known as channelopathies, the Company is advancing a novel product pipeline of neurology-focused therapies to address areas of high unmet medical need, with a focus on epilepsy.

The Company has incurred significant operating losses since inception. As of December 31, 2019, the Company had an accumulated deficit of \$249,655 and a \$41,595 net loss for the year ended December 31, 2019. Management expects to continue to incur significant expenses in excess of revenue and to incur operating losses for the foreseeable future. To date, the Company has financed its operations primarily through funding received from collaboration and license agreements, private placements of common and preferred shares, public offerings of common shares, debt financing, and government funding.

Until such time as the Company can generate substantial product revenue, if ever, management expects to finance the Company's cash needs through a combination of collaboration agreements, equity and debt financings. The continuation of research and development activities and the future commercialization of its products are dependent on the Company's ability to successfully raise additional funds when needed. It is not possible to predict either the outcome of future research and development programs or the Company's ability to continue to fund these programs in the future.

**2. Basis of presentation:**

These consolidated financial statements are presented in U.S. dollars and have been prepared in accordance with United States generally accepted accounting principles ("U.S. GAAP"). Certain information has been reclassified to conform with the financial statement presentation adopted for the current year.

The Company has one wholly-owned subsidiary as at December 31, 2019, Xenon Pharmaceuticals USA Inc., which was incorporated in Delaware on December 2, 2016.

These consolidated financial statements include the accounts of the Company and its wholly-owned subsidiary. All intercompany transactions and balances have been eliminated on consolidation.

**3. Significant accounting policies:****(a) Use of estimates:**

The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Significant areas of estimates include, but are not limited to, revenue recognition including estimated timing of completion of performance obligations, the determination of stock-based compensation and the amounts recorded as accrued liabilities. Actual results could differ materially from those estimates. Estimates and assumptions are reviewed quarterly. All revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

**(b) Cash and cash equivalents:**

Cash equivalents are highly liquid investments that are readily convertible into cash with terms to maturity of three months or less when acquired. Cash equivalents are recorded at cost plus accrued interest. The carrying value of these cash equivalents approximates their fair value.

**(c) Marketable securities:**

Marketable securities are investments with original maturities exceeding three months, and the Company classified these securities as current assets as the Company has the intent and ability to convert these securities into cash without penalty within the next 12 months. Marketable securities accrue interest based on a fixed interest rate for the term. The carrying value of marketable securities is recorded at quoted prices in active markets, which approximates their fair value.

(d) Intellectual Property

The costs incurred in establishing and maintaining patents for intellectual property developed internally are expensed in the period incurred.

(e) Property, plant and equipment:

Property, plant and equipment are stated at cost less accumulated depreciation and/or accumulated impairment losses, if any. Repairs and maintenance costs are expensed in the period incurred.

Property, plant and equipment are amortized over their estimated useful lives using the straight-line method based on the following rates:

Asset	Rate
Research equipment	5 years
Office furniture and equipment	5 years
Computer equipment	3 years
Leasehold improvements	Over the lesser of lease term or estimated useful life

(f) Impairment of long-lived assets:

The Company monitors its long-lived assets for indicators of impairment. If such indicators are present, the Company assesses the recoverability of affected assets by determining whether the carrying value of such assets is less than the sum of the undiscounted future cash flows of the assets. If such assets are found not to be recoverable, the Company measures the amount of such impairment by comparing the carrying value of the assets to the fair value of the assets, with the fair value generally determined based on the present value of the expected future cash flows associated with the assets. No impairment of long-lived assets was noted during the years ended December 31, 2019 and 2018.

(g) Leases:

Leases classified as operating leases are recorded as lease liabilities based on the present value of minimum lease payments over the lease term, discounted using the lessor's rate implicit in the lease or the Company's incremental borrowing rate, if the lessor's implicit rate is not readily determinable. The lease term includes all periods covered by renewal and termination options where the Company is reasonably certain to exercise the renewal options or not to exercise the termination options. Corresponding right-of-use assets are recognized consisting of the lease liabilities, initial direct costs and any lease incentive payments. Lease liabilities are drawn down as lease payments are made and right-of-use assets are depreciated over the term of the lease. Operating lease expenses are recognized on a straight-line basis over the term of the lease, consisting of interest accrued on the lease liability and depreciation of the right-of-use asset, adjusted for changes in index-based variable lease payments in the period of change. Lease payments on short-term operating leases with lease terms twelve months or less are expensed as incurred.

(h) Concentration of credit risk and of significant customers:

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist primarily of cash and cash equivalents. Cash and cash equivalents were held at major financial institutions in Canada and the United States. Such deposits may be in excess of insured limits in the event of non-performance by the institutions; however, the Company does not anticipate non-performance. Collaboration revenues earned from Neurocrine Biosciences, Inc. ("Neurocrine Biosciences") and Flexion Therapeutics, Inc. ("Flexion") as described in Note 13 accounted for 48% and 51% of total revenues for the year ended December 31, 2019, respectively.

(i) Financial instruments and fair value:

We measure certain financial instruments and other items at fair value.

To determine the fair value, we use the fair value hierarchy for inputs used to measure fair value of financial assets and liabilities. This hierarchy prioritizes the inputs to valuation techniques used to measure fair value into three levels: Level 1 (highest priority), Level 2, and Level 3 (lowest priority).

- *Level 1* - Unadjusted quoted prices in active markets for identical instruments.

- *Level 2* - Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly. Level 2 inputs include quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the asset or liability (i.e., interest rates, yield curves, etc.), and inputs that are derived principally from or corroborated by observable market data by correlation or other means (market corroborated inputs).
- *Level 3* - Inputs are unobservable and reflect the Company's assumptions as to what market participants would use in pricing the asset or liability. The Company develops these inputs based on the best information available.

Assets and liabilities are classified based on the lowest level of input that is significant to the fair value measurements. Changes in the observability of valuation inputs may result in a reclassification of levels for certain securities within the fair value hierarchy.

The Company's Level 1 assets include cash and cash equivalents and marketable securities with quoted prices in active markets. The carrying amount of accounts receivables, accounts payable and accrued expenses approximates fair value due to the nature and short-term of those instruments. The Company's term loan bears interest at a rate that approximates prevailing market rates for instruments with similar characteristics and, accordingly, the carrying value of the loan approximates fair value.

(j) Revenue recognition:

The Company recognizes the amount of revenue to which it expects to be entitled, for the transfer of promised goods or services to customers under a five-step model: (i) identify contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when or as a performance obligation is satisfied.

The Company generates revenue primarily through collaboration agreements. Such agreements may require the Company to deliver various rights and/or services, including intellectual property rights or licenses and research and development services. Under such collaboration agreements, the Company is generally eligible to receive non-refundable upfront payments, funding for research and development services, milestone payments, and royalties.

In contracts where the Company has more than one performance obligation to provide its customer with goods or services, each performance obligation is evaluated to determine whether it is distinct based on whether (i) the customer can benefit from the good or service either on its own or together with other resources that are readily available and (ii) the good or service is separately identifiable from other promises in the contract. The consideration under the contract is then allocated between the distinct performance obligations based on their respective relative standalone selling prices. The estimated standalone selling price of each deliverable reflects the Company's best estimate of what the selling price would be if the deliverable was regularly sold on a standalone basis and is determined by reference to market rates for the good or service when sold to others or by using an adjusted market assessment approach if selling price on a standalone basis is not available.

The consideration allocated to each distinct performance obligation is recognized as revenue when control is transferred to the customer for the related goods or services. Consideration in exchange for research and development services performed by the Company on behalf of the licensee is recognized upon performance of such activities at rates consistent with prevailing market rates. Consideration associated with at-risk substantive performance milestones, including sales-based milestones, is recognized as revenue when it is probable that a significant reversal of the cumulative revenue recognized will not occur. Sales-based royalties received in connection with licenses of intellectual property are subject to a specific exception in the revenue standards, whereby the consideration is not included in the transaction price and recognized in revenue until the customer's subsequent sales or usages occur.

(k) Research and development costs:

Research and development costs are expensed in the period incurred.

Certain development activity costs, such as pre-clinical costs, manufacturing costs and clinical trial costs, are a component of research and development costs and include fees paid to contract research organizations, investigators and other vendors who conduct certain product development activities on behalf of the Company. The amount of expenses recognized in a period related to service agreements is based on estimates of the work performed using the accrual basis of accounting. These estimates are based on patient enrollment, services provided and goods delivered, contractual terms, and experience with similar contracts. The Company monitors these factors and adjusts the estimates accordingly. Payments made to third parties under these arrangements in advance of the receipt of the related services are recorded as prepaid expenses until the services are rendered.

(l) Stock-based compensation:

The Company grants stock options to employees, directors and officers pursuant to stock option plans described in note 11c.

Employee stock-based compensation expense is measured at the grant date, based on the estimated fair value of the award, and is recognized as an expense, net of actual forfeitures, over the requisite service period with a corresponding increase in additional paid-in capital. Stock-based compensation expense is amortized on a straight-line basis over the requisite service period for the entire award, which is generally the vesting period of the award. Any consideration received on exercise of stock options is credited to share capital.

(m) Foreign currency translation:

The functional and reporting currency of the Company and its subsidiary is the U.S. dollar. Monetary assets and liabilities denominated in a currency other than the U.S. dollar are re-measured into U.S. dollars at the exchange rate prevailing as at the balance sheet date. Non-monetary assets and liabilities acquired in a currency other than U.S. dollars are translated at historical exchange rates prevailing at each transaction date.

Revenue and expense transactions are translated at the exchange rates prevailing at each transaction date. Exchange gains and losses on translation are included in the consolidated statements of operations and comprehensive income (loss) as foreign exchange gain (loss).

(n) Income taxes:

Deferred income taxes are recognized for the future tax consequences attributable to differences between the carrying amounts of assets and liabilities and their respective tax bases and net operating loss and credit carryforwards. Deferred income tax assets and liabilities are measured at enacted rates expected to apply to taxable income in the years in which those temporary differences and carryforwards are expected to be recovered or settled. The effect on deferred income tax assets and liabilities of a change in tax rates is recognized in the consolidated statement of operations and comprehensive income (loss) in the period that includes the enactment date. A valuation allowance is provided when realization of deferred income tax assets does not meet the more-likely-than-not criterion for recognition.

(o) Segment and geographic information:

Operating segments are defined as components of an enterprise about which separate discrete information is available for evaluation by the chief operating decision maker, or decision making group, in deciding how to allocate resources and in assessing performance. The Company views its operations and manages its business in one operating segment.

**4. Changes in significant accounting policies:**

(a) Leases:

The Company adopted the new lease standard (Accounting Standards Codification "ASC" 842), effective January 1, 2019, using the transition method under which previously presented financial statements are not restated and the cumulative effect of adopting the new lease standard on leases existing as of, or entered into after January 1, 2019, is recognized by an adjustment to retained earnings at the effective date. Consequently, comparative periods have been accounted for in accordance with the previous lease standard and the disclosures are in accordance with ASC 840.

In addition, the Company elected to apply the package of practical expedients which allows entities not to reassess its previous conclusions about lease identification, lease classification, and initial direct costs. The Company elected not to use hindsight to determine lease terms and to not separate non-lease components from the associated lease component. The new lease standard only impacted the Company's one operating lease for its premises. Adoption of the new lease standard resulted in recognition of a right-of-use asset of \$1,333 and a lease liability of \$1,453, as of January 1, 2019. The difference between the right-of-use asset and lease liability relates to the balance of deferred tenant inducements. In addition, a cumulative effect adjustment of \$175 was recorded to opening retained earnings. The adoption of the new lease standard did not materially impact the consolidated statement of operations and comprehensive loss or the consolidated statement of cash flows. For additional disclosure and detail, see note 8 below.

(b) Collaborative Agreements:

In November 2018, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) 2018-18, Collaborative Arrangements (Topic 808): Clarifying the Interaction between Topic 808 and Topic 606. These amendments make targeted improvements to accounting for collaborative arrangements by clarifying that certain transactions between collaborative arrangement participants should be accounted for as revenue under Topic 606 when the collaborative arrangement participant is a customer in the context of a unit of account. In those situations, all the guidance in Topic 606 should be applied, including recognition, measurement, presentation, and disclosure requirements. In addition, unit-of-account guidance in Topic 808 was aligned with the guidance in Topic 606 (that is, a distinct good or service) when an entity is assessing whether the collaborative arrangement or a part of the arrangement is within the scope of Topic 606. The Company has early adopted this standard in the fourth quarter of 2019 on a retrospective basis to the date of initial application of Topic 606. The adoption of the standard had no impact on the Company’s consolidated balance sheets, consolidated statements of operations and comprehensive loss and consolidated statements of cash flows.

5. **Future changes in accounting policies:**

In November 2019, the FASB issued ASU 2019-08, Compensation—Stock Compensation (Topic 718) and Revenue from Contracts with Customers (Topic 606): Codification Improvements—Share-Based Consideration Payable to a Customer. These amendments clarify that companies must measure and classify share-based payment awards to a customer following the guidance in Topic 718. A company will classify awards as liabilities or equity following the guidance in Topic 718, and measure them at their grant-date fair value. The awards will be recorded as a reduction to revenue or an expense based on the guidance in Topic 606. If a company intends to provide an award to a customer and the grant date has not occurred, the transaction price guidance in Topic 606 should be followed to estimate the fair value of the award. A company must adjust the fair value estimate each reporting date until a grant date is achieved and recognize changes in the grant-date fair value of an award as a result of changes in the expected outcome of a service or a performance condition as a reduction in the transaction price. If the terms of the award are modified after the grantee vests in the award and is no longer a customer, the award may be subject to other guidance. These amendments will be effective for fiscal years and interim periods within those fiscal years, beginning after December 15, 2019. The Company is currently evaluating the new guidance to determine the impact it will have on the Company’s consolidated financial statements.

In December 2019, the FASB issued ASU 2019-12, Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes. These amendments market targeted improvement to simplify accounting for income taxes, changes the accounting for certain income tax transactions and makes certain improvements to the codification. These amendments will be effective for fiscal years and interim periods within those fiscal years, beginning after December 15, 2020 with early adoption permitted. The Company is currently evaluating the new guidance to determine the impact it will have on the Company’s consolidated financial statements.

6. **Net income (loss) per common share:**

Basic net income (loss) per common share is calculated using the two-class method required for participating securities which includes the convertible preferred shares as a separate class. The preferred shares entitle the holders to participate in dividends and in earnings and losses of the Company on an equivalent basis as common shares. Accordingly, undistributed earnings (losses) are allocated to common shares and participating preferred shares based on the weighted-average shares of each class outstanding during the period.

The treasury stock method is used to compute the dilutive effect of the Company’s stock options and warrants. Under this method, the incremental number of common shares used in computing diluted net income (loss) per common share is the difference between the number of common shares assumed issued and purchased using assumed proceeds.

The if-converted method is used to compute the dilutive effect of the Company’s convertible preferred shares. Under the if-converted method, dividends on the preferred shares, if applicable, are added back to earnings attributable to common shareholders, and the preferred shares and paid-in kind dividends are assumed to have been converted at the share price applicable at the end of the period. The if-converted method is applied only if the effect is dilutive.

For the years ended December 31, 2019 and 2018, all stock options, warrants and convertible preferred shares were anti-dilutive and were excluded from the diluted weighted average common shares outstanding for the period.

7. **Property, plant and equipment:**

Property, plant and equipment consisted of the following:

	December 31,	
	2019	2018
Research equipment	\$ 6,522	\$ 7,313
Office furniture and equipment	985	1,046
Computer equipment	2,473	2,461
Leasehold improvements	6,370	6,370
Less: accumulated depreciation and amortization	(14,690)	(16,199)
Net book value	\$ 1,660	\$ 991

8. **Leases**

The Company has one operating lease for research laboratories and office space in Burnaby, British Columbia for a 120-month term from April 1, 2012 to March 31, 2022.

The cost components of the operating lease were as follows for the year ended December 31, 2019:

	Year Ended	
	December 31, 2019	
<b>Lease Cost</b>		
Operating lease expense	\$	436
Variable lease expense <sup>(1)</sup>		542
<b>Lease Term and Discount Rate</b>		
Remaining lease term (years)		2.25
Discount rate		3.75%

- (1) Variable lease costs are payments that vary because of changes in facts or circumstances and include common area maintenance and property taxes related to the premises. Variable lease costs are excluded from the calculation of minimum lease payments.

Future minimum lease payments as of December 31, 2019 were as follows:

Year ending December 31:	
2020	650
2021	614
2022	147
Total future minimum lease payments	\$ 1,411
Less: imputed interest	(49)
Less: future lease incentives reasonably certain of use	(451)
Present value of lease liabilities	\$ 911

9. **Accounts payable and accrued expenses:**

Accounts payable and accrued expenses consisted of the following:

	December 31,	
	2019	2018
Trade payables	\$ 2,473	\$ 665
Employee compensation, benefits, and related accruals	2,892	1,728
Consulting and contracted research	3,104	1,404
Professional fees	154	237
Other	195	85
Total	\$ 8,818	\$ 4,119

#### 10. Term Loan:

In December 2017, the Company entered into a Loan and Security Agreement (the "Loan Agreement") with Silicon Valley Bank (the "Bank") under which the Company was funded an initial tranche of \$7,000. In June 2018, the Company entered into a First Loan Modification Amendment (the "Modification") to the Loan Agreement (together, the "Modified Loan Agreement"), pursuant to which the Bank accelerated the availability of a second tranche of \$5,000.

In August 2018, the Company entered into an Amended and Restated Loan and Security Agreement (the "Amended and Restated Loan Agreement") with the Bank, pursuant to which the Bank agreed to extend a term loan to the Company with a principal amount of \$15,500 (the "Term Loan"). The Term Loan was used to repay in full outstanding borrowings of \$12,000 under the Modified Loan Agreement and a payment of \$485, which represented the current portion of the final payment fee due under the Modified Loan Agreement, as well as for working capital and other general corporate purposes, including the advancement of the Company's clinical development programs. The Term Loan accrues interest at a floating per annum rate of 0.5% above the prime rate, which is payable monthly commencing in September 2018. The Term Loan is interest-only until March 31, 2020, followed by 30 equal monthly installments of principal plus interest, maturing on September 1, 2022. In addition, the Company is required to pay a final payment fee of 6.5% of the Term Loan on the date on which the term loan is prepaid, paid or becomes due and payable in full.

The Company may prepay all, but not less than all, of the Term Loan subject to a prepayment fee of \$295, which represents the deferred portion of the final payment fee due under the Modified Loan Agreement, plus 3.0% if prepaid prior to the first anniversary of the effective date of the Amended and Restated Loan Agreement, 2.0% if prepaid on or after the first anniversary, but prior to the second anniversary, or 1.0%, if prepaid on or after the second anniversary but prior to the maturity date. As security for its obligations under the Amended and Restated Loan Agreement, the Company granted the Bank a first priority security interest on substantially all of the Company's assets except its intellectual property and subject to certain other exceptions.

In connection with the Modification, the number of common shares exercisable pursuant to the warrant issued to the Bank in December 2017 under the Loan Agreement (the "December 2017 Warrant") increased by 36,008 common shares. The relative fair value of the additional common shares exercisable pursuant to the December 2017 Warrant was \$247 and was classified in equity. With this increase, the December 2017 Warrant allowed the Bank to purchase a total of 86,419 of the Company's common shares at a price per common share of \$2.43. The December 2017 Warrant was immediately exercisable, had a 10-year term, and contained a cashless exercise provision. In connection with the entry into the Amended and Restated Loan Agreement, the maximum number of common shares exercisable pursuant to the December 2017 Warrant was fixed at 86,419 at a price per common share of \$2.43. In September 2018, the Company issued 72,325 common shares for the cashless exercise of the December 2017 Warrant.

In connection with the Amended and Restated Loan Agreement, the Company issued a new warrant to the Bank to purchase 40,000 of the Company's common shares at a price per common share of \$9.79. The relative fair value of the common shares exercisable pursuant to this warrant was \$291 and was classified in equity. The warrant is immediately exercisable, has a 10-year term and contains a cashless exercise provision. This warrant remains outstanding at December 31, 2019.

The debt proceeds were allocated based on the relative fair values of the debt instrument and the warrant instrument. The fair value of the warrant and the closing costs were recorded as debt discounts and are being amortized using the effective interest rate method over the term of the loan. At December 31, 2019, the Company determined the effective interest rate on the Amended and Restated Loan Agreement with the Bank to be 8.84% (2018 - 9.53%). Amortization of the debt discount and accretion of the final payment fee was \$526 for the year ended December 31, 2019 (2018 - \$284). Interest payments are made monthly.

Interest expense was \$1,434 for the year ended December 31, 2019 (2018 - \$1,394).

The outstanding loan and unamortized debt discount balances as of December 31, 2019 in accordance with the repayment terms under Amended and Restated Loan Agreement are as follows:

	December 31,	
	2019	2018
Term loan	\$ 15,500	\$ 15,500
Less: unamortized discount on loan	(372)	(600)
Less: current portion	(4,650)	-
Accrued portion of final payment fee	411	114
Loan payable, long-term	\$ 10,889	\$ 15,014

Scheduled principal payments on outstanding debt as of December 31, 2019, excluding the final payment fee of \$1,008, are as follows:

2020	4,650
2021	6,200
2022	4,650
Total	\$ 15,500

The Amended and Restated Loan Agreement contains customary representations and warranties, events of default (including an event of default upon the occurrence of a material impairment on the Bank's security interest over the collateral, and a material adverse change of the Company) and affirmative and negative covenants, including, among others, covenants that limit or restrict the Company's ability to incur indebtedness, grant liens, merge or consolidate, dispose of assets, make investments, make acquisitions, enter into certain transactions with affiliates, engage in any new line of business, pay dividends or make distributions, or repurchase stock, in each case subject to certain exceptions. Upon the occurrence and during the continuance of an event of default, a default interest rate will apply that is 5.0% above the otherwise applicable interest rate. The Company is in compliance with all covenants at December 31, 2019.

## 11. Share capital:

### (a) Financing:

In May 2018, the Company entered into an at-the-market equity offering sales agreement with Stifel Nicolaus & Company, Incorporated ("Stifel") to sell common shares of the Company having aggregate gross proceeds of up to \$30,000, from time to time, through an "at-the-market" equity offering program under which Stifel would act as sales agent. The Company sold 3,440,000 common shares under the sales agreement for proceeds of approximately \$29,200, net of commissions paid, but excluding transaction expenses.

In July 2018, the Company entered into an at-the-market equity offering sales agreement with Jefferies LLC ("Jefferies") and Stifel, to sell common shares of the Company having aggregate gross proceeds of up to \$50,000, from time to time, through an "at-the-market" equity offering program under which Jefferies and Stifel would act as sales agent. The Company sold 1,600,000 common shares under the sales agreement for proceeds of approximately \$14,820, net of commissions paid, but excluding transaction expenses. In connection with the Company's entry into the July 2018 sales agreement with Jefferies and Stifel, the May 2018 sales agreement was mutually terminated by the Company and Stifel.

In September 2018, the Company entered into an underwriting agreement with Jefferies and Stifel, relating to an underwritten public offering of 4,500,000 common shares sold by the Company at a public offering price of \$14.00 per common share. The Company received net proceeds of \$59,220, net of underwriting discounts and commissions, but before offering expenses. In connection with the Company's entry into the September 2018 underwriting agreement with Jefferies and Stifel, the July 2018 sales agreement was mutually terminated by the Company, Jefferies and Stifel.

In November 2019, the Company entered into an at-the-market equity offering sales agreement with Jefferies and Stifel to sell common shares of the Company having aggregate gross proceeds of up to \$50,000 from time to time, through an "at-the-market" equity offering program under which Jefferies and Stifel would act as sales agents. As of December 31, 2019, the Company had sold 805,643 common shares under the sales agreement for proceeds of approximately \$10,771, net of commissions paid, but excluding transaction expenses. In January 2020, the Company sold an additional 2,446,687 common shares for proceeds of approximately \$37,979, net of commissions paid, but excluding estimated transaction expenses.

In December 2019, in connection with the License and Collaboration Agreement with Neurocrine Biosciences (the "Neurocrine Collaboration Agreement"), the Company executed a Share Purchase Agreement ("SPA") pursuant to which the Company issued 1,408,847 common shares for an aggregate purchase price of \$20,000, or \$14.196 per common share, which represents a premium of \$3,333 when measured at fair value on the date of issuance. These common shares are subject to lock-up restrictions and standstill agreement for a period of two years. The SPA contains certain other customary terms and conditions, including mutual representations, warranties and covenants. For additional information regarding the Neurocrine Collaboration Agreement, refer to note 13a.

### (b) Authorized share capital:

The Company's authorized share capital consists of an unlimited number of common and preferred shares without par value.

(c) Stock-based compensation:

In June 2014, the shareholders of the Company approved the 2014 Equity Incentive Plan (the “2014 Plan”) which permits the grant of stock-based compensation awards to directors, officers, employees and consultants of the Company. The Company’s pre-existing stock option plan (the “Amended and Restated Stock Option Plan”) was limited to the granting of stock options as equity incentive awards whereas the 2014 Plan also allows for the issuance of restricted shares, restricted share units, share appreciation rights and performance shares. The 2014 Plan replaced the Amended and Restated Stock Option Plan. No further options will be granted under the Company’s Amended and Restated Stock Option Plan.

The Amended and Restated Stock Option Plan provided for the grant of options for the purchase of common shares to directors, officers, employees and consultants prior to the Company’s initial public offering. The options granted under the Amended and Restated Stock Option Plan vest on a graduated basis over a four-year period or less and each option’s maximum term is ten years. The Amended and Restated Stock Option Plan will continue to govern the options granted thereunder.

Under the 2014 Plan, options granted generally vest on a graduated basis over a four-year period or less. The exercise price of the options is determined by the board of directors but must at least be equal to the fair market value of the common shares on the date of grant. Options may be exercised over a maximum term of ten years. As of December 31, 2019, a total of 99,818 stock options remain to be granted under the 2014 Plan. The number of common shares available for issuance under the 2014 Plan was increased by 1,028,806, effective January 1, 2020, as approved by the board of directors in accordance with the terms of the 2014 Plan.

In September 2019, the board of directors of the Company adopted the 2019 Inducement Equity Incentive Plan (the “2019 Inducement Plan”) and, subject to the adjustment provisions of the 2019 Inducement Plan, reserved 400,000 of the Company’s common shares for issuance pursuant to equity awards granted under the 2019 Inducement Plan.

The 2019 Inducement Plan was adopted without shareholder approval in accordance with the applicable Nasdaq Listing Rules. The 2019 Inducement Plan provides for the grant of equity-based awards, including share options, share appreciation rights, restricted share awards, restricted share unit awards and performance share awards, and its terms are substantially similar to the Company’s 2014 Equity Incentive Plan, including with respect to treatment of equity awards in the event of a “merger” or “change of control” as defined under the 2019 Inducement Plan, but with such other terms and conditions intended to comply with the Nasdaq inducement award exception or to comply with the Nasdaq acquisition and merger exception. However, the Company’s 2014 Equity Incentive Plan permits certain exchange programs (which includes repricings) without shareholder approval, while the 2019 Inducement Plan requires shareholder approval for such exchange programs.

Awards under the 2019 Inducement Plan may only be made to individuals not previously employees or non-employee directors of the Company (or following such individuals’ bona fide period of non-employment with the Company), as an inducement material to the individuals’ entry into employment with the Company, or, to the extent permitted by the applicable Nasdaq Listing Rules, in connection with a merger or acquisition. As of December 31, 2019, a total of 264,750 stock options remain to be granted under the 2019 Inducement Plan.

Summary of stock option activity is as follows:

	Number of Options	Weighted Average Exercise Price		Aggregate Intrinsic Value
		CAD \$	U.S. \$	
Outstanding, December 31, 2017	2,339,905	9.32	7.41	159
Granted	706,600	6.73	5.19	
Exercised <sup>(1)</sup>	(251,163)	4.57	3.53	1,028
Forfeited, cancelled or expired	(123,436)	13.61	10.50	
Outstanding, December 31, 2018	2,671,906	9.49	6.96	3,483
Granted	1,225,575	12.49	9.43	
Exercised <sup>(1)</sup>	(266,157)	5.56	4.24	1,594
Forfeited, cancelled or expired	(97,088)	16.36	12.41	
Outstanding, December 31, 2019	3,534,236	10.29	7.90	19,618
Exercisable, December 31, 2019	1,946,026	10.02	7.69	11,755

- (1) During the year ended December 31, 2019, 36,174 (2018 – 49,502) stock options were exercised for the same number of common shares in exchange for cash. In the same period, the Company issued 137,843 (2018 – 106,474) common shares for the cashless exercise of 229,983 (2018 – 201,661) stock options.

The following table summarizes the stock options outstanding and exercisable at December 31, 2019:

Range of Exercise Prices U.S. \$	Options Outstanding				Options Exercisable			
	Number of Options Outstanding	Weighted Average Remaining Contractual Life (years)	Weighted Average Exercise Price		Number of Options Exercisable	Weighted Average Exercise Price		
			CAD \$	U.S. \$		CAD \$	U.S. \$	
\$2.05 - \$4.70	576,115	4.19	3.79	2.91	476,364	3.61	2.77	
\$4.71 - \$7.44	682,230	7.63	6.82	5.24	366,588	6.94	5.33	
\$7.45 - \$8.50	787,990	5.96	10.48	8.05	677,756	10.43	8.01	
\$8.51 - \$9.52	1,181,034	9.53	12.26	9.42	134,929	12.10	9.30	
\$9.53 - \$18.70	306,867	5.00	22.12	17.00	290,389	22.47	17.26	
	3,534,236	7.10	10.29	7.90	1,946,026	10.02	7.69	

At December 31, 2019, there were 1,946,026 options exercisable with a weighted average remaining contractual life December 31, 2019 of 5.4 years.

A summary of the Company's non-vested stock option activity and related information for the year ended December 31, 2019 is as follows:

	Number of Options	Weighted Average Grant Date Fair Value	
		CAD \$	USD \$
Non-vested, January 1, 2019	1,105,471	5.61	4.11
Granted	1,225,575	8.11	6.23
Vested	(681,918)	6.24	4.79
Forfeited or cancelled	(60,918)	8.29	6.37
Non-vested, December 31, 2019	1,588,210	7.17	5.51

The aggregate fair value of options vested during the year ended December 31, 2019 was \$3,255 (2018 – \$2,861 ).

The fair value of stock options at the date of grant is estimated using the Black-Scholes option-pricing model which requires multiple subjective inputs. The risk-free interest rate of the options is based on the U.S. Treasury yield curve in effect at the date of grant for a term similar to the expected term of the option. The expected volatility is based on the historical volatility of the Company's common shares calculated based on a period of time commensurate with the expected term assumption. Expected life assumptions are based on the Company's historical data. The dividend yield is based on the fact that the Company has never paid cash dividends and has no present intention to pay cash dividends. Forfeitures are recognized as they occur.

The weighted-average option pricing assumptions are as follows:

	Years ended December 31		
	2019	2018	
Average risk-free interest rate		1.77%	2.79%
Expected volatility		69%	75%
Average expected term (in years)		6.86	7.38
Expected dividend yield		0.00%	0.00%
Weighted average fair value of options granted	\$	6.23	\$ 3.74

Stock-based compensation expense is classified in the consolidated statements of operations and comprehensive loss as follows:

	Years ended December 31,			
	2019		2018	
Research and development	\$	1,283	\$	988
General and administrative		1,661		1,772
	\$	2,944	\$	2,760

As of December 31, 2019, the unrecognized stock-based compensation cost related to the non-vested stock options was \$8,460, which is expected to be recognized over a weighted-average period of 2.55 years.

(d) Exchange agreement with certain funds affiliated with BVF Partners L.P. (collectively, "BVF"):

In March 2018, the Company and BVF entered into an exchange agreement pursuant to which the Company issued to BVF 2,868,000 Series 1 Preferred Shares in exchange for 2,868,000 common shares which were subsequently cancelled by the Company.

The Company filed articles of amendment creating an unlimited number of Series 1 Preferred Shares. The Series 1 Preferred Shares are convertible into common shares on a one-for-one basis subject to the holder, together with its affiliates, beneficially owning no more than 9.99% of the total number of common shares issued and outstanding immediately after giving effect to such conversion (the "Beneficial Ownership Limitation"). The holder may reset the Beneficial Ownership Limitation to a higher or lower number, not to exceed 19.99% of the total number of common shares issued and outstanding immediately after giving effect to such conversion, upon providing written notice to the Company which will be effective 61 days after delivery of such notice. Each Series 1 Preferred Share is also convertible into one common share at any time at the Company's option without payment of additional consideration, provided that prior to any such conversion, the holder, together with its affiliates, beneficially owns less than 5.00% of the total number of common shares issued and outstanding and such conversion will not result in the holder, together with its affiliates, beneficially holding more than 5.00% of the total number of common shares issued and outstanding immediately after giving effect to such conversion. In the event of a change of control, holders of Series 1 Preferred Shares shall be issued one common share for each outstanding Series 1 Preferred Share held immediately prior to the change of control (without regard to the Beneficial Ownership Limitation), and following such conversion, will be entitled to receive the same kind and amount of securities, cash or property that a holder of common shares is entitled to receive in connection with such change of control.

The Series 1 Preferred Shares rank equally to the common shares in the event of liquidation, dissolution or winding up or other distribution of the assets of the Company among its shareholders and the holders of the Series 1 Preferred Shares are entitled to vote together with the common shares on an as-converted basis and as a single class, subject in the case of each holder of the Series 1 Preferred Shares to the Beneficial Ownership Limitation. Any Series 1 Preferred Shares that are ineligible to be converted into common shares due to the Beneficial Ownership Limitation, measured as of a given record date that applies for a shareholder meeting or ability to act by written consent, shall be deemed to be non-voting securities of the Company. Holders of Series 1 Preferred Shares are entitled to receive dividends (without regard to the Beneficial Ownership Limitation) on the same basis as the holders of common shares. The Company may not redeem the Series 1 Preferred Shares.

The Company recorded the issuance of Series 1 Preferred Shares and corresponding cancellation of common shares at \$7.61 per share, the estimated weighted average cost at which BVF acquired the common shares. The Series 1 Preferred Shares are recorded wholly as equity under ASC 480, with no bifurcation of conversion feature from the host contract, given that the Series 1 Preferred Shares cannot be cash settled and have no redemption features.

During the year ended December 31, 2018, BVF converted 1,852,000 Series 1 Preferred Shares in exchange for an equal number of common shares of the Company.

**12. Concentrations of market risk:**

(a) Foreign currency risk:

At December 31, 2019, the Company had U.S. dollar denominated cash and cash equivalents and marketable securities of \$129,838 (2018 - \$110,771) and Canadian denominated cash and cash equivalents and marketable securities of CAD\$14,962 (2018 - CAD\$11,644).

The Company faces foreign currency exchange rate risk in part, as a result of entering into transactions denominated in currencies other than U.S. dollars, particularly those denominated in Canadian dollars. The Company also holds non-U.S. dollar denominated cash and cash equivalents, marketable securities, accounts receivable and accounts payable, which are denominated in Canadian dollars.

Changes in foreign currency exchange rates can create significant foreign exchange gains or losses to the Company. The Company's current foreign currency risk is with the Canadian dollar, as a majority of non-U.S. dollar denominated expenses are denominated in Canadian dollars and a portion of cash and cash equivalents and marketable securities are held in Canadian dollars. The Company does not currently hedge its exposure and thus assumes the risk of future gains or losses on the amounts of Canadian dollars held.

(b) Interest Rate Risk:

At December 31, 2019, the Company had cash and cash equivalents and marketable securities of \$141,358. The Company's interest rate risk is primarily attributable to its cash and cash equivalents and marketable securities. The Company believes that it does not have any material exposure to changes in the fair value of these assets as a result of changes in interest rates due to the short term nature of cash and cash equivalents and marketable securities. The Company does not enter into investments for trading or speculative purposes and has not used any derivative financial instruments to manage interest rate exposure.

The Company had a total outstanding loan balance of \$15,500 as of December 31, 2019, of which \$4,650 was due within 12 months. The interest rate on borrowings under the Amended and Restated Loan Agreement with the Bank accrues at a floating per annum rate of 0.5% above the prime rate.

**13. Collaboration agreements:**

The Company has entered into a number of collaboration agreements under which it may have received non-refundable upfront payments. Each arrangement is assessed in accordance with ASC 606 under the five-step model as described in note 3j. The Company generally recognizes revenue from non-refundable upfront payments over the estimated term of the performance obligation or period in which the underlying benefit is transferred to the customer. If non-refundable license fees have value to the customer on a standalone basis, separate from the undelivered performance obligations, they are recognized upon delivery. The Company evaluates the measure of progress each reporting period and, if necessary, adjusts the measure of performance and related revenue recognition.

Research and development milestones in the Company's collaboration agreements may include the following types of events:

- completion of pre-clinical research and development work leading to selection of product candidates;
- initiation of Phase 1, Phase 2 or Phase 3 clinical trials; and
- achievement of certain other scientific or development events.

Regulatory milestone payments may include the following types of events:

- filing of regulatory applications for marketing approval in the U.S., Europe or Japan, including investigational new drug applications and new drug applications; and
- marketing approval in a major market, such as the U.S., Europe or Japan.

Commercialization milestone payments may include payments triggered by annual product sales that achieve pre-specified thresholds.

The Company evaluates each arrangement that includes research and development and sales-based milestone payments to determine whether the milestones are considered probable of being reached and estimates the amount to be included in the transaction price using the most likely amount method. Milestone payments that are not within the control of the Company are not considered probable of being achieved. If it is probable that a significant revenue reversal would not occur, the associated milestone value is included in the transaction price. The transaction price is then allocated to each performance obligation on a relative standalone selling price basis, for which the Company recognizes revenue as or when the performance obligations under the contract are satisfied. At the end of each subsequent reporting period, the Company re-evaluates the probability of achievement of such milestones, and if necessary, adjusts its estimate of the overall transaction price.

(a) Neurocrine license and collaboration agreement:

In December 2019, the Company entered into the Neurocrine Collaboration Agreement with Neurocrine Biosciences to establish a collaboration under which the parties will identify, research and develop sodium channel inhibitors. Pursuant to this agreement, the Company granted an exclusive license to XEN901, now known as NBI-921352, a clinical stage selective Nav1.6 sodium channel inhibitor for the treatment of epilepsy. The Company also granted an exclusive license to pre-clinical compounds for development, XEN393, XPC'535 and XPC'391 (collectively, the "DTCs"). The agreement also includes a two-year research collaboration to discover, identify and develop additional novel Nav1.6 and Nav1.2/1.6 inhibitors ("Research Compounds"), with an option to extend for an additional year.

At execution of the agreement, Neurocrine Biosciences paid the Company an upfront fee of \$50,000, which included a \$30,000 payment in cash and a \$20,000 equity investment in the Company. For additional information regarding the equity investment, refer to note 11a. The Company is eligible to receive pre-commercial and commercial milestone payments with respect to the licensed products totaling up to an additional \$1,692,500, comprised of (a) up to \$25,000 upon the U.S. Food and Drug Administration's acceptance of an Investigational New Drug application for XEN901, with 55% of the amount in the form of an equity investment in the Company at a 15% premium to the Company's 30-day volume weighted average price at that time, subject to Neurocrine Biosciences' common share ownership of the Company being below 19.9%, (b) up to \$1,067,500 in additional development and regulatory milestone payments related to XEN901 and other licensed Nav1.6 or Nav1.2/1.6 inhibitor products, and (c) up to \$600,000 in additional sales-based milestone payments for multiple products. In addition, the Company is eligible to receive royalties on net sales in and outside the U.S., ranging from (a) for XEN901, a low double-digit percentage to a mid-teen percentage and a high-single digit percentage to low double-digit percentage, respectively; (b) for DTCs, a high-single digit percentage to a low double-digit percentage and a mid-single digit percentage to a high-single digit percentage, respectively; and (c) for Research Compounds, a mid-single digit percentage to a high-single digit percentage and a tiered mid-single digit percentage, respectively. Royalty rates are subject to customary reductions.

The Company has an option to co-fund 50% of the development costs of XEN901 or another product candidate in the U.S., exercisable upon achievement of certain milestones, in exchange for increased U.S. royalties. The Company has not exercised this option as of December 31, 2019.

The Company and Neurocrine Biosciences will collaborate on the conduct of two collaboration programs: (a) a joint research collaboration to discover, identify and preclinically develop Research Compounds (the "Research Program") and (b) a collaborative development program for XEN901 and two DTCs selected by the joint steering committee (the "Initial Development Program"). The Research Program is intended to include the preclinical development of the Company's existing non-clinical Research Compounds and the discovery of new back-up and follow-on Research Compounds to XEN901 and the two DTCs selected by the joint steering committee as clinical development candidates for subsequent development and commercialization by Neurocrine Biosciences. During the term of the Research Program, the parties will conduct related activities in accordance with an agreed upon research plan and budget. Each party will be solely responsible for all costs such party incurs to conduct its activities under the research plan, provided that Neurocrine Biosciences will fund the Company for certain full-time employees and out-of-pocket expenses incurred by the Company in accordance with the research budget. The Initial Development Program will include: (a) completion of any preclinical and clinical studies that are ongoing as the date of the Neurocrine Collaboration Agreement for XEN901 and for two DTCs selected by the joint steering committee; (b) a pharmacokinetic, drug-drug interaction and food effect Phase 1 clinical trial of a XEN901 product to examine the adequacy of a new pediatric formulation; and (c) all preclinical studies of two DTCs selected by the joint steering committee. Each party will be responsible for all costs such party incurs to conduct its activities under these development plans, provided that, with respect to XEN901 development activities, Neurocrine Biosciences will fund the Company for certain full-time employees and out-of-pocket expenses incurred by the Company. The Company will also be responsible for a portion of certain near-term manufacturing costs for XEN901 under the collaboration.

The agreement includes the following performance obligations: (i) an exclusive license to XEN901 with associated technology and know-how transfer, (ii) an exclusive license to the DTCs with associated know-how transfer, (iii) a license to Research Compounds and research services under the Research Program, (iv) development services under the Initial Development Program for XEN901, and (v) development services under the Initial Development Program for the DTCs. The license to the Research Compounds and the research services under the Research Program are considered a single performance obligation as Neurocrine Biosciences cannot benefit from such a license on its own or from other resources commonly available in the industry, without the corresponding research services due to the unique and specialized expertise of the Company that is not readily available in the marketplace. Given the current development phase of the Research Compounds, the performance obligation and related revenue has been linked entirely to the performance of research services.

At execution of the agreement, the transaction price consisted of the \$30,000 upfront consideration received in cash and a premium of \$3,333 on the \$20,000 equity investment in the Company measured at fair value on the date of issuance. The Company also considered the following elements in determining the overall transaction price:

- Under the arrangement, the Company is entitled to funding for certain full-time equivalent and external costs incurred by the Company under performance obligations (iii) and (iv). The arrangement consideration related to the services under performance obligations (iii) and (iv) to be performed on behalf of Neurocrine Biosciences were excluded from the initial transaction price allocation because the consideration and performance are contingent upon Neurocrine Biosciences requesting performance of the services and these services are priced at an estimated fair value.

- None of the at-risk substantive performance milestones, including development, regulatory and sales-based milestones, were included in the transaction price, as all milestone amounts are outside the control of the Company and contingent upon Neurocrine Biosciences's efforts and success in future clinical trials. Consideration associated with at-risk substantive performance milestones is recognized when it is probable that a significant reversal of the cumulative revenue recognized will not occur. Any consideration related to sales-based royalties will be recognized when the related sales occur as they were determined to relate predominantly to the license granted to Neurocrine Biosciences and therefore have also been excluded from the transaction price. The Company will re-evaluate the transaction price at each reporting period and as uncertain events are resolved or other changes in circumstances occur.

The total transaction price of \$33,333 was allocated to performance obligation (v) based on its estimated standalone selling price determined based on internal development plans and budget, with the balance allocated to performance obligations (i) and (ii) by the residual approach. The residual approach was used as standalone selling prices, including market data, for equivalent performance obligations were not available. The allocation of the transaction price requires significant management judgment. The Company has allocated the transaction price as follows: \$28,807 to performance obligations (i) and (ii), which performance obligations are delivered concurrently, and \$4,526 to performance obligation (v). The Company measures proportional performance over time using an input method based on cost incurred relative to the total estimated costs for each of the identified obligations at each reporting period. Any changes to these estimates will be recognized in the period in which they change as a cumulative catch up. The considerations allocated to performance obligations (i) and (ii) are expected to be recognized as revenue over an approximate ten month period from the signing of the agreement, which is the expected period to complete the delivery of the licenses and transfer of the relevant technology and know-how. The considerations allocated to performance obligation (v) is expected to be recognized as revenue over an approximate fifteen month period beginning January 2020 which is the expected period to complete the development services under the Initial Development Program for the DTCs.

During the year ended December 31, 2019, the Company recognized \$2,881 of revenue associated with (i) the exclusive license to XEN901 and (ii) the exclusive license to the DTCs, and \$448 for the research and development services under performance obligations (iii) the Research Program and (iv) the Initial Development Program for XEN901. As of December 31, 2019, there is \$448 of accounts receivable and \$30,452 of deferred revenue related to the Neurocrine Collaboration Agreement, which is classified as either current or non-current on the balance sheet based on the period the services are expected to be delivered.

(b) Flexion definitive agreement:

In September 2019, the Company entered into an agreement with Flexion pursuant to which Flexion acquired all rights with respect to XEN402, and a related compound (collectively "XEN402"), including certain regulatory documentation, intellectual property rights, reports, data and all quantities of XEN402 owned or controlled by the Company. XEN402 is a sodium channel inhibitor that the Company had previously developed with its collaborator Teva. Flexion paid the Company upfront consideration of \$3,000. In addition, the Company will also be eligible for various CMC, development and regulatory milestone payments of up to \$9,000 through initiation of a Phase 2 proof-of-concept clinical trial, of which \$500 related to the initiation of the first GLP toxicology study has been included in the recognized transaction price at December 31, 2019 in accordance with ASC 606 as the outcome is considered highly probable of occurring. Following successful proof-of-concept, the Company may be entitled to future clinical development and global regulatory approval milestone payments of up to \$40,750, commercial milestone payments of up to \$75,000, as well as future royalties ranging from mid-single to low-double digit percentages. These additional amounts will be recognized as determinable.

(c) Teva Pharmaceutical Industries Ltd. (“Teva Pharmaceutical”) collaborative development and license agreement:

In December 2012, the Company entered into a collaborative development and license agreement with Teva Pharmaceutical, through its subsidiary, Ivax International GmbH, pursuant to which the Company granted Teva Pharmaceutical an exclusive worldwide license to develop and commercialize certain products, including TV-45070 (formerly XEN402). In March 2018, the Company and Teva Pharmaceuticals International GmbH and Teva Canada Limited (together, “Teva”), entered into a termination agreement terminating by mutual agreement the collaborative development and license agreement. In connection with the termination, Teva returned and the Company cancelled 1,000,000 common shares that were owned by Teva. Pursuant to the terms of the termination agreement, Teva has also returned, licensed or assigned to the Company certain intellectual property, including certain patent rights and transferred regulatory filings related to TV-45070 to the Company. The termination agreement requires the Company to pay a low single-digit percentage royalty to Teva based on net sales of approved products, if any, resulting from any continued development and commercialization of TV-45070 by the Company or a sublicensee during the period that assigned or licensed patents cover such products. This obligation was subsequently assumed by Flexion pursuant to the sale of all rights with respect to XEN402; see note 13b above. The Company has no further financial obligations with respect to the termination agreement with Teva. The Company recorded a gain on the termination of the collaboration agreement of \$4,398, net of direct costs incurred in connection with the termination and cancellation of 1,000,000 common shares, based on the estimated fair value represented by the market price of the common shares prior to the closing of the transaction.

(d) Genentech collaborative research and license agreement:

In December 2011, the Company entered into a collaborative research and license agreement with Genentech and its affiliate, F. Hoffman-La Roche Ltd. to discover and develop selective oral inhibitors of Nav1.7 for the treatment of pain. Pursuant to this agreement, the Company granted Genentech a worldwide exclusive license to develop and commercialize compounds directed to Nav1.7 and products incorporating such compounds for all uses. The Company also granted Genentech a worldwide non-exclusive license to diagnostic products for the purpose of developing or commercializing such compounds.

Under the terms of the agreement, Genentech paid the Company an upfront fee of \$10,000. Genentech also provided funding to the Company for certain of the Company’s full-time equivalents performing the research collaboration plan, which concluded in December 2016.

The Company received and recorded a \$5,000 milestone payment in 2013 for the selection of a compound for development and an \$8,000 payment in 2014 upon the approval by Health Canada of the clinical trial application. No additional milestone payments or royalties have been received to date.

The Company is eligible to receive pre-commercial and commercial milestone payments with respect to the licensed products totaling up to an additional \$613,000, comprised of up to \$45,500 in pre-clinical and clinical milestone payments, up to \$387,500 in regulatory milestone payments, and up to \$180,000 in sales-based milestone payments for multiple products and indications. In addition, the Company is eligible to receive royalties based on net sales of the licensed products, which range from a mid single-digit percentage to ten percent for small-molecule inhibitors for the timeframe that such products are covered by the licensed patents and a low single-digit percentage thereafter until the date that is ten years after first commercial sale on a country-by-country basis, plus a low single-digit percentage for large-molecule inhibitors of Nav1.7 for a period of ten years from first commercial sale on a country-by-country basis. The pre-commercial and commercial milestone payments and royalties may be subject to reductions based on the period in which the compound that is selected for development and commercialization was initially conceived.

At execution of the collaborative research and license agreement with Genentech, the transaction price included only the \$10,000 upfront consideration received. None of the at-risk substantive performance milestones, including research and development and sales-based milestones, were included in the transaction price, as all milestone amounts are outside the control of the Company and contingent upon Genentech’s efforts and success in future clinical trials. Consideration associated with at-risk substantive performance milestones is recognized when it is probable that a significant reversal of the cumulative revenue recognized will not occur. Any consideration related to sales-based royalties will be recognized when the related sales occur as they were determined to relate predominantly to the license granted to Genentech and therefore have also been excluded from the transaction price. The Company will re-evaluate the transaction price in each reporting period and as uncertain events are resolved or other changes in circumstances occur.

The collaborative research and license agreement with Genentech was amended multiple times, in May 2015, November 2015, March 2016, May 2017, July 2018 and September 2018, to either extend the term of the research program or to provide the Company with greater flexibility in developing compounds that target Nav1.6. Pursuant to the current amendment, the Company obtained a non-exclusive, irrevocable, perpetual, world-wide, sublicensable license under the know-how forming part of the Genentech intellectual property developed under the Nav1.7 collaboration that is necessary or useful to make, use, sell, offer for sale, and import compounds from the Company's Nav1.6 program that are above a certain potency on Nav1.7 and were conceived prior to a certain date and products containing those compounds. The Company's license from Genentech includes commercialization rights but we are restricted from developing or commercializing the Company's Nav1.6 compounds below a certain potency on Nav1.7 and conceived prior to a certain date in the field of epilepsy and any of the Company's Nav1.6 compounds conceived prior to a certain date, regardless of their potency on Nav1.7, in the field of pain. In exchange for the rights granted to the Company under this amendment, Genentech is eligible to receive a low single-digit percentage, tiered royalty on net sales of the Company's Nav1.6 compounds conceived prior to a certain date, including XEN901, now known as NBI-921352, for a period of ten years from first commercial sale on a country-by-country basis. In accordance with the Neurocrine Collaboration Agreement, the Company remains solely responsible for all payments to Genentech with respect to certain Nav1.6 compounds, including NBI-921352, licensed to Neurocrine Biosciences. Pursuant to the amendment, Genentech was granted a royalty-free, non-exclusive, world-wide license under the Company's Nav1.6 intellectual property to make, use, sell, offer for sale and import compounds below a certain potency on Nav1.7 and products containing those compounds for all uses and indications except epilepsy.

In March 2014, the Company entered into a new agreement with Genentech for pain genetics, which focused on identifying genetic targets associated with rare phenotypes where individuals have an inability to perceive pain or where individuals have non-precipitated spontaneous severe pain. Pursuant to the terms of this agreement, any intellectual property arising out of the collaboration is jointly owned by the Company and Genentech. The Company also granted Genentech a time-limited, exclusive right of first negotiation on a target-by-target basis to form joint drug discovery collaborations. Under the terms of this agreement, Genentech paid an upfront payment of \$1,500 and two \$250 milestone payments related to the identification of novel pain targets in September 2015 and July 2017. Genentech's time-limited, exclusive right of first negotiation, which was exercisable throughout the research term, expired at the same time as the agreement in March 2018. Despite such termination, the Company remains eligible for up to an additional \$1,500 in milestone payments.

Pursuant to the terms of the Company's agreement with the Memorial University of Newfoundland, the Company must pay to the Memorial University of Newfoundland certain milestone payments, a single-digit percentage of net sales for pain products the Company sells directly and a single-digit percentage of royalties received for sales of pain products by Genentech.

#### **14. Commitments and contingencies:**

(a) Priority access agreement with Medpace Inc. ("Medpace"):

In August 2015, the Company entered into a priority access agreement with Medpace for the provision of certain clinical development services. Under the terms of the agreement, the Company has committed to using Medpace non-exclusively for clinical development services over the five year term of the agreement. In consideration for priority access to Medpace resources and preferred service rates, the Company has committed to \$7,000 of services over the term of the agreement, \$3,024 of services have been received to date and \$3,976 remains committed as at December 31, 2019.

(b) License, manufacture and supply agreement:

In March 2017, the Company entered into a license, manufacture and supply agreement with a pharmaceutical contract manufacturing organization for the access and use of certain regulatory documents as well as for the manufacture and supply of clinical and commercial drug product to support the development of XEN007. Under the terms of the agreement, the Company paid an upfront fee of \$500 CAD and will be required to pay a low single-digit percentage royalty on net sales of any products developed and commercialized under the agreement.

(c) Asset purchase agreement with 1st Order Pharmaceuticals, Inc. ("1st Order"):

In April 2017, the Company acquired XEN1101 (previously known as 1OP2198) from 1st Order pursuant to an asset purchase agreement. 1st Order previously acquired 1OP2198 from Valeant Pharmaceuticals Luxembourg S.a.r.l., an indirect subsidiary of Bausch Health Companies Inc. (together with Valeant Pharmaceuticals Ireland Limited, "Bausch Health") and the Company has assumed certain financial responsibilities under that agreement. Under the terms of the agreement, the Company paid an upfront fee of \$350 and milestone payments in 2017 totaling \$700, which were expensed as research and development.

In September 2018, the Company entered into a milestone and royalty buy-out agreement with Bausch Health under which all potential clinical development, regulatory and sales-based milestones and royalties on commercial sales with respect to XEN1101 that may become owed to Bausch Health under the asset purchase agreement were terminated in exchange for a one-time payment of \$6,000 which was expensed in the period.

Future potential payments to 1st Order include \$500 in clinical development milestones, up to \$6,000 in regulatory milestones, and \$1,500 in other milestones, which may be payable pre-commercially. There are no royalty obligations to 1st Order. No amounts have been accrued to date based on the progress against these milestones.

(d) License agreement:

In July 2017, the Company entered into a license agreement with a pharmaceutical company for the access and use of certain regulatory documents to support the development of XEN007. Under the terms of the agreement, the Company paid an upfront fee of \$1,000, which was expensed as research and development. Future potential payments include \$2,000 in clinical development milestones, up to \$7,000 in regulatory milestones, plus a low-to-mid single-digit percentage royalty on net sales of any products developed and commercialized under the agreement. No amounts have been accrued to date based on the progress against these milestones.

(e) Guarantees and indemnifications:

The Company has entered into license and research agreements with third parties that include indemnification provisions that are customary in the industry. These indemnification provisions generally require the Company to compensate the other party for certain damages and costs incurred as a result of third party claims or damages arising from these transactions.

The maximum amount of potential future indemnification is unlimited; however, the Company currently holds commercial and product liability insurance. This insurance limits the Company's exposure and may enable it to recover a portion of any future amounts paid. Historically, the Company has not made any indemnification payments under such agreements and the Company believes that the fair value of these indemnification obligations is minimal. Accordingly, the Company has not recognized any liabilities relating to these obligations for any period presented.

15. **Income taxes:**

Income tax recovery varies from the amounts that would be computed by applying the expected Canadian and provincial statutory income tax rate of 27% (2018 – 27% ) to loss before income taxes as shown in the following table:

	2019	2018
Computed recoveries at Canadian federal and provincial tax rates	\$ (11,237)	\$ (9,314)
Change in valuation allowance	11,148	10,472
Investment tax credits earned	(1,522)	(1,567)
Tax attributes expired/utilized	678	911
Non-deductible expenditures	477	(472)
Other	433	(54)
<b>Income tax recovery</b>	<b>\$ (23)</b>	<b>\$ (24)</b>

Income tax recovery for the years ended December 31, 2019 and 2018 arose from the operations of Xenon Pharmaceuticals USA Inc., the Company's wholly-owned subsidiary in the United States.

Deferred income tax assets and liabilities result from the temporary differences between the amount of assets and liabilities recognized for financial statement and income tax purposes. The significant components of the Company's net deferred income tax assets are as follows:

	2019	2018
<b>Deferred income tax assets</b>		
Scientific research and experimental development pool	\$ 27,531	\$ 26,572
Investment tax credits	24,384	23,808
Non-capital losses	23,603	22,035
Depreciable assets	5,983	5,710
Deferred financing fees	972	1,303
Deferred revenue	8,223	—
Other	347	203
Less - valuation allowance	(90,805)	(79,526)
<b>Net deferred income tax assets</b>	<b>\$ 238</b>	<b>\$ 105</b>

The realization of deferred income tax assets is dependent upon the generation of sufficient taxable income during future periods in which the temporary differences are expected to reverse. The valuation allowance is reviewed on a quarterly basis and if the assessment of the "more likely than not" criteria changes, the valuation allowance is adjusted accordingly. A full valuation allowance continues to be applied against deferred income tax assets in Canada as the Company has assessed that the realization of such assets does not meet the "more likely than not" criteria. Deferred income tax assets recorded on the consolidated balance sheets as of December 31, 2019 and 2018 result from the temporary differences between the amounts of assets and liabilities recognized for financial statement and income tax purposes related to the operations of Xenon Pharmaceuticals USA Inc.

At December 31, 2019, the Company has unclaimed tax deductions for scientific research and experimental development expenditures of \$101,965 (2018 – \$98,412) with no expiry.

At December 31, 2019, the Company has \$22,992 (2018 – \$22,253) of investment tax credits available to offset federal taxes payable and \$7,675 (2018 – \$7,640) of provincial tax credits available to offset provincial taxes payable in the future.

At December 31, 2019, the Company has non-capital losses, net of uncertain tax positions, carried forward for tax purposes, which are available to reduce taxable income of future years of approximately \$87,417 (2018 – \$81,611).

The investment tax credits and loss carry forwards expire over various years to 2039.

As of December 31, 2019, the total amount of the Company's unrecognized tax benefits of uncertain tax positions were \$10,850 (2018 – \$6,350). If recognized in future periods, the unrecognized tax benefits would not affect the Company's effective tax rate. The Company recognizes potential accrued interest and penalties related to unrecognized tax benefits within the income tax provision. Interest and penalties have not been accrued at December 31, 2019 as none would be owing on the unrecognized tax benefits due to the availability of non-capital losses to shelter any potential taxable income arising thereon. The Company does not currently expect any significant increases or decreases to these unrecognized tax benefits within 12 months of the reporting date.

The Company files income tax returns in Canada and the United States, the jurisdictions in which the Company believes that it is subject to tax. In jurisdictions in which the Company does not believe it is subject to tax and therefore does not file income tax returns, the Company can provide no certainty that tax authorities in those jurisdictions will not subject one or more tax years (since the inception of the Company) to examination. Further, while the statute of limitations in each jurisdiction where an income tax return has been filed generally limits the examination period, as a result of loss carry-forwards, the limitation period for examination generally does not expire until several years after the loss carry-forwards are utilized. Other than routine audits by tax authorities for tax credits and tax refunds that the Company claims, the Company is not aware of any other material income tax examination currently in progress by any taxing jurisdiction. Tax years ranging from 2002 to 2018 remain subject to examinations in Canada and the United States.

## 16. Related Parties:

### (a) License and collaboration agreement with Neurocrine Biosciences:

In December 2019, the Company and Neurocrine Biosciences entered into the Neurocrine Collaboration Agreement and related SPA pursuant to which the Company issued 1,408,847 common shares, representing approximately 5.4% of the Company's then outstanding common shares. For additional information regarding the common shares issued to Neurocrine Biosciences or the Neurocrine Collaboration Agreement, refer to note 11a and note 13a, respectively.

(b) Exchange agreement with BVF:

In March 2018, the Company and BVF entered into an exchange agreement pursuant to which the Company issued 2,868,000 Series 1 Preferred Shares in exchange for 2,868,000 common shares which were subsequently cancelled by the Company. Prior to the closing of the transactions contemplated in the exchange agreement, BVF held a number of common shares representing approximately 19.9% of the Company's then outstanding common shares. For additional information regarding the Series 1 Preferred Shares, refer to note 11d.

(c) Termination of collaboration agreement with Teva:

In March 2018, the Company and Teva, entered into a termination agreement terminating by mutual agreement the collaborative development and license agreement dated December 7, 2012, as amended. In connection with the termination, the Company cancelled 1,000,000 common shares that were owned by Teva. Prior to the share cancellation, Teva owned more than 5% of the Company's outstanding common shares. For additional information regarding the termination agreement and the share cancellation, refer to note 13c.

**17. Subsequent events:**

In January 2020, the Company entered into an underwriting agreement with Jefferies, Stifel and Guggenheim Securities, LLC, relating to an underwritten public offering of 3,750,000 common shares sold by the Company at a public offering price of \$16.00 per common share, and granted the underwriters an option for a period of 30 days to purchase up to an additional 562,500 common shares. The public offering was completed on January 27, 2020, and the Company received net proceeds of \$56,400, net of underwriting discounts and commissions, but before offering expenses. The underwriters exercised their option in full and in February 2020, the Company received additional net proceeds of \$8,460, net of underwriting discounts and commissions.

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

None.

**Item 9A. Controls and Procedures**

*Evaluation of disclosure controls and procedures.* Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2019. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure.

Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of December 31, 2019, our Chief Executive Officer and our Chief Financial Officer concluded that, as of such date, our disclosure controls and procedures were, in design and operation, effective at the reasonable assurance level.

*Management's Annual Report on Internal Control over Financial Reporting.* Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, is responsible for establishing and maintaining adequate internal control over our financial reporting, as such term is defined in Rule 13a-15(f) and Rule 15d-15(f) of the Securities Exchange Act of 1934. Our internal control over financial reporting is a process to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. Our internal control over financial reporting includes those policies and procedures that:

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

The effectiveness of any system of internal control over financial reporting, including ours, is subject to inherent limitations, including the exercise of judgment in designing, implementing, operating, and evaluating the controls and procedures, and the inability to eliminate misconduct completely. Accordingly, any system of internal control over financial reporting, including ours, no matter how well designed and operated, can only provide reasonable, not absolute, assurances. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions or that the degree of compliance with the policies or procedures may deteriorate. Management has assessed the effectiveness of our internal control over financial reporting as at December 31, 2019. In making its assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control – Integrated Framework (2013) to evaluate the effectiveness of our internal control over financial reporting. Based on this assessment using those criteria, management has concluded that our internal control over financial reporting was effective as of December 31, 2019.

KPMG LLP, our independent registered public accounting firm, has issued an attestation report on our internal control over financial reporting as of December 31, 2019, which is included herein.

*Changes in internal control over financial reporting.* There was no change in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the three months ended December 31, 2019 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

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

We have a written code of conduct that applies to all of our directors, officers and employees. A copy of the most up-to-date version of our code of conduct is available within the "Investors" section on our company website located at <http://www.xenon-pharma.com> and on SEDAR at [www.sedar.com](http://www.sedar.com).

## PART III

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

The information required by Item 10 of Form 10-K is incorporated by reference to our Proxy Statement for the 2020 Annual Meeting of Shareholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2019.

### **Item 11. Executive Compensation**

The information required by Item 11 of Form 10-K is incorporated by reference to our Proxy Statement for the 2020 Annual Meeting of Shareholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2019.

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

The information required by Item 12 of Form 10-K is incorporated by reference to our Proxy Statement for the 2020 Annual Meeting of Shareholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2019.

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

The information required by Item 13 of Form 10-K is incorporated by reference to our Proxy Statement for the 2020 Annual Meeting of Shareholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2019.

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

The information required by Item 14 of Form 10-K is incorporated by reference to our Proxy Statement for the 2020 Annual Meeting of Shareholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2019.

PART IV

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

(a)(1) Financial Statements — The financial statements included in Item 8 are filed as part of this Annual Report on Form 10-K.

(a)(2) Financial Statement Schedules — All schedules have been omitted because they are not applicable or required, or the information required to be set forth therein is included in the consolidated Financial Statements or notes thereto included in Item 8 of this Annual Report on Form 10-K.

(a)(3) Exhibits — The exhibits required by Item 601 of Regulation S-K are listed in paragraph (b) below.

(b) Exhibits — The exhibits listed in the table below are filed herewith or are incorporated by reference to exhibits previously filed with the SEC.

Exhibit Number	Description of Document	Incorporated by Reference			
		Form	File No.	Exhibit	Filing Date
3.1	<a href="#">Articles of the Company.</a>	10-Q	001-36687	3.1	December 15, 2014
3.1A	<a href="#">Articles of Amendment to the Articles of the Company, creating the Series 1 Preferred Shares.</a>	8-K	001-36687	3.1	March 28, 2018
3.2	<a href="#">Amended and Restated By-laws of the Company.</a>	10-Q	001-36687	3.2	December 15, 2014
4.1	<a href="#">Form of Common Share Certificate.</a>	S-1/A	333-198666	4.1	October 6, 2014
4.2	<a href="#">Specimen Series 1 Preferred Share Certificate.</a>	8-K	001-36687	4.1	March 28, 2018
4.3	<a href="#">Warrant to Purchase Shares, dated August 3, 2018, by and between Xenon Pharmaceuticals Inc. and Silicon Valley Bank.</a>	8-K	001-36687	4.1	August 7, 2018
4.4	<a href="#">Description of Securities.</a>				
10.1†	<a href="#">Exclusive Collaborative Research and Option Agreement, dated June 10, 2009, by and between the Company and Merck Sharp &amp; Dohme Research Ltd, as amended.</a>	S-1/A	333-198666	10.1	October 6, 2014
10.2†	<a href="#">Collaborative Research and License Agreement, dated December 22, 2011, by and among the Company, Genentech, Inc. and F. Hoffmann-La Roche Ltd, as amended.</a>	S-1/A	333-198666	10.3	October 6, 2014
10.3#	<a href="#">Stock Option Plan, as amended, and form of option agreement thereunder.</a>	S-1/A	333-198666	10.7	October 6, 2014
10.4#	<a href="#">2014 Equity Incentive Plan.</a>	S-1	333-198666	10.8	September 10, 2014
10.5#	<a href="#">Form of Share Option Agreement, as amended, under the 2014 Equity Incentive Plan.</a>	10-K	001-36687	10.8A	March 8, 2017
10.6	<a href="#">Lease, dated as of 2001, by and between the Company and Discovery Parks Incorporated, as amended through July 1, 2014.</a>	S-1	333-198666	10.14	September 10, 2014
10.7#	<a href="#">Form of Director and Executive Officer Indemnification Agreement.</a>	S-1/A	333-198666	10.15	October 6, 2014
10.8†	<a href="#">Amendment #4, dated May 13, 2015, to the Collaborative Research and License Agreement, dated December 22, 2011, by and among the Company, Genentech, Inc. and F. Hoffman-La Roche Ltd, as amended.</a>	10-Q	001-36687	10.1	August 13, 2015

Exhibit Number	Description of Document	Incorporated by Reference			
		Form	File No.	Exhibit	Filing Date
10.9	<a href="#">Lease Modification Agreement, effective July 1, 2015, by and between the Company and Redstone Enterprises Ltd.</a>	10-Q	001-36687	10.1	November 10, 2015
10.10	<a href="#">Lease Modification Agreement, effective December 1, 2015, by and between the Company and Redstone Enterprises Ltd.</a>	10-K	001-36687	10.19	March 8, 2016
10.11†	<a href="#">Amendment #5, dated November 19, 2015, to the Collaborative Research and License Agreement, dated December 22, 2011, by and among the Company, Genentech, Inc. and F. Hoffman-La Roche Ltd, as amended.</a>	10-K	001-36687	10.20	March 8, 2016
10.12†	<a href="#">Amendment #6, dated March 9, 2016, to the Collaborative Research and License Agreement, dated December 22, 2011, by and among the Company, Genentech, Inc. and F. Hoffman-La Roche Ltd, as amended.</a>	10-Q	001-36687	10.1	May 10, 2016
10.13†	<a href="#">Letter Agreement to Amendment #4, dated May 8, 2017, to the Collaborative Research and License Agreement, dated December 22, 2011, by and among the Company, Genentech, Inc. and F. Hoffman-La Roche Ltd, as amended.</a>	10-Q	001-36687	10.1	August 3, 2017
10.14†	<a href="#">Asset Purchase Agreement, dated April 25, 2017, by and between the Company and 1st Order Pharmaceuticals, Inc.</a>	10-Q	001-36687	10.2	August 3, 2017
10.15†	<a href="#">Termination Agreement by and among Xenon Pharmaceuticals Inc., Teva Pharmaceuticals International GmbH and Teva Canada Limited dated March 7, 2018.</a>	8-K	001-36687	10.1	March 7, 2018
10.16	<a href="#">Exchange Agreement, dated March 23, 2018, by and among the Company and the shareholders listed in Schedule B thereto.</a>	8-K	001-36687	10.1	March 28, 2018
10.17†	<a href="#">Letter Amendment #7, dated July 25, 2018, to the Collaborative Research and License Agreement, dated December 22, 2011, by and among the Company, Genentech, Inc. and F. Hoffmann-La Roche Ltd, as amended.</a>	10-Q	001-36687	10.3	August 7, 2018
10.18	<a href="#">Amended and Restated Loan and Security Agreement, dated August 3, 2018, by and among Xenon Pharmaceuticals Inc., Xenon Pharmaceuticals USA Inc. and Silicon Valley Bank.</a>	8-K	001-36687	10.1	August 7, 2018
10.19	<a href="#">Milestone and Royalty Buy-Out Agreement, dated September 7, 2018, by and among Xenon Pharmaceuticals Inc., Valeant Pharmaceuticals Ireland Limited and Valeant Pharmaceuticals Luxembourg S.a.r.l.</a>	8-K	001-36687	10.1	September 11, 2018
10.20†	<a href="#">Amended and Restated Amendment #7, dated September 27, 2018, to the Collaborative Research and License Agreement, dated December 22, 2011, by and among the Company, Genentech, Inc. and F. Hoffmann-La Roche Ltd, as amended.</a>	10-Q	001-36687	10.5	November 6, 2018
10.21#	<a href="#">Amended and Restated Employment Agreement, dated March 19, 2019, by and between the Company and Simon Pimstone.</a>	8-K	001-36687	10.1	March 25, 2019
10.22#	<a href="#">Amended and Restated Employment Agreement, dated March 19, 2019, by and between the Company and Ian Mortimer.</a>	8-K	001-36687	10.2	March 25, 2019
10.23#	<a href="#">Amended and Restated Employment Agreement, dated March 19, 2019, by and between the Company and Ernesto Aycardi.</a>	8-K	001-36687	10.3	March 25, 2019

Exhibit Number	Description of Document	Incorporated by Reference			
		Form	File No.	Exhibit	Filing Date
10.24#	<a href="#">Amended and Restated Employment Agreement, dated March 19, 2019, by and between the Company and Robin Sherrington.</a>				
10.25#	<a href="#">Amended and Restated Employment Agreement, dated March 20, 2019, by and between the Company and James Empfield.</a>				
10.26#	<a href="#">2019 Inducement Equity Incentive Plan and related form of share option agreement.</a>	8-K	001-36687	10.1	September 10, 2019
10.27	<a href="#">At-the-Market Equity Offering Sales Agreement, dated as of November 5, 2019, by and among Xenon Pharmaceuticals Inc., Jefferies LLC and Stifel, Nicolaus &amp; Company, Incorporated.</a>	8-K	001-36687	1.1	November 5, 2019
10.28†	<a href="#">License and Collaboration Agreement, dated as of December 2, 2019, by and between Xenon Pharmaceuticals Inc. and Neurocrine Biosciences, Inc.</a>	8-K	001-36687	10.1	December 2, 2019
10.29	<a href="#">Share Purchase Agreement, dated as of December 2, 2019, by and between Xenon Pharmaceuticals Inc. and Neurocrine Biosciences, Inc.</a>	8-K	001-36687	10.2	December 2, 2019
21.1	<a href="#">List of Subsidiaries of the Company.</a>	10-K	001-36687	21.1	March 8, 2017
23.1	<a href="#">Consent of KPMG LLP, Independent Registered Public Accounting Firm.</a>				
24.1	<a href="#">Powers of Attorney (contained on signature page).</a>				
31.1	<a href="#">Rule 13a-14(a) / 15d-14(a) Certification of Principal Executive Officer</a>				
31.2	<a href="#">Rule 13a-14(a) / 15d-14(a) Certification of Principal Financial Officer</a>				
32.1*	<a href="#">Section 1350 Certification of Principal Executive Officer</a>				
32.2*	<a href="#">Section 1350 Certification of Principal Financial Officer</a>				
101.INS	XBRL Instance Document				
101.SCH	XBRL Taxonomy Extension Schema Document				
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document				
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document				
101.LAB	XBRL Taxonomy Extension Label Linkbase Document				
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document				

† Confidential treatment has been granted with respect to certain portions of this exhibit. Omitted portions have been filed separately with the Securities and Exchange Commission.

†† Portions of this exhibit have been omitted in accordance with Item 601(b)(10) of Regulation S-K because they are not material and would likely cause competitive harm to the registrant if disclosed.

# Indicates management contract or compensatory plan.

\* The Certifications attached as Exhibits 32.1 and 32.2 that accompany this Annual Report on Form 10-K are not deemed filed with the Securities and Exchange Commission and are not to be incorporated by reference into any filing of Xenon Pharmaceuticals Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Form 10-K, irrespective of any general incorporation language contained in such filing.

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

Not applicable.

## SIGNATURES

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

Dated: March 9, 2020

### XENON PHARMACEUTICALS INC.

By: /s/ Simon Pimstone  
Simon Pimstone  
Chief Executive Officer

## POWER OF ATTORNEY

Each person whose signature appears below hereby constitutes and appoints Simon Pimstone and Ian Mortimer, and each of them severally, as his or her true and lawful attorneys-in-fact and agents, with full power to act without the other and with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities (including his or her capacity as a director and/or officer of Xenon Pharmaceuticals Inc.) to sign any and all amendments and supplements to this report, and any and all other instruments necessary or incidental in connection herewith, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Commission.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Simon Pimstone</u> Simon Pimstone	Chief Executive Officer (Principal Executive Officer)	March 9, 2020
<u>/s/ Ian Mortimer</u> Ian Mortimer	President and Chief Financial Officer (Principal Financial and Accounting Officer)	March 9, 2020
<u>/s/ Michael Tarnow</u> Michael Tarnow	Chair of the Board of Directors	March 9, 2020
<u>/s/ Mohammad Azab</u> Mohammad Azab	Director	March 9, 2020
<u>/s/ Clarissa Desjardins</u> Clarissa Desjardins	Director	March 9, 2020
<u>/s/ Steven Gannon</u> Steven Gannon	Director	March 9, 2020
<u>/s/ Michael Hayden</u> Michael Hayden	Director	March 9, 2020
<u>/s/ Frank Holler</u> Frank Holler	Director	March 9, 2020
<u>/s/ Gary Patou</u> Gary Patou	Director	March 9, 2020
<u>/s/ Dawn Svoronos</u> Dawn Svoronos	Director	March 9, 2020

**DESCRIPTION OF THE REGISTRANT'S SECURITIES  
REGISTERED PURSUANT TO SECTION 12 OF THE  
SECURITIES EXCHANGE ACT OF 1934**

Xenon Pharmaceuticals Inc. has one class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended: our common shares, no par value per share.

The general terms and provisions of our common shares are summarized below. This summary does not purport to be complete and is subject to, and qualified in its entirety by express reference to, the provisions of our articles of incorporation and by-laws, each of which is included as an exhibit to the Annual Report on Form 10-K to which this description is an Exhibit, and each of which may be amended from time to time. We encourage you to read our articles of incorporation and bylaws and the applicable provisions of the Canada Business Corporations Act (the "CBCA") for additional information.

Our authorized share capital consists of (i) an unlimited number of common shares and (ii) an unlimited number of preferred shares issuable in series, of which an unlimited number have been designated as Series 1 preferred shares. Our board of directors is authorized, without shareholder approval except as required by the listing standards of The Nasdaq Global Market, to issue additional shares of our common shares or preferred shares.

**Common Shares**

**Voting Rights.** The holders of our common shares are entitled to one vote for each common share held on all matters submitted to a vote of the shareholders, including the election of directors. Our articles and by-laws do not provide for cumulative voting rights. Because of this, the holders of a plurality of the common shares entitled to vote in any election of directors can elect all of the directors standing for election, if they should so choose.

**Dividends.** Subject to priority rights that may be applicable to any then outstanding preferred shares, holders of our common shares are entitled to receive dividends, as and when declared by our board of directors in their absolute discretion out of legally available funds.

**Liquidation.** In the event of our liquidation, dissolution or winding up, holders of our common shares will be entitled to share ratably in the net assets legally available for distribution to shareholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any then outstanding preferred shares.

**Rights and Preferences.** Holders of common shares have no pre-emptive or conversion rights and our common shares have no provisions for redemption or repurchase for cancellation, surrender or sinking or purchase funds. There are no provisions in our articles or by-laws requiring holders of common shares to contribute additional capital. The rights, preferences and privileges of the holders of common shares are subject to and may be adversely affected by, the rights of the holders of any series of preferred shares that we may designate and issue in the future.

**Fully Paid and Nonassessable.** All of our outstanding common shares are fully paid and nonassessable. Our board of directors has the authority to issue, without further action by our shareholders, additional common shares.

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## Preferred Shares

Our board of directors has the authority to issue, without further action by our shareholders, an unlimited number of preferred shares, issuable in one or more series, and subject to the provisions of the CBCA and the provisions of our Series 1 preferred shares, to fix such rights, preferences, privileges, restrictions and conditions thereon, including dividend and voting rights, as our board of directors may determine, and such rights, preferences and privileges, including dividend rights, voting rights and rights relating to the distribution of our assets in the event of liquidation, dissolution or winding up of our affairs, whether, voluntary or involuntary, or any other distribution of our assets among our shareholders for the purpose of winding up our affairs, may be superior to those of our common shares. Any new series of preferred shares authorized by our board of directors will have rights, preferences and privileges that are substantially the same as our Series 1 preferred shares, the terms of which are described in greater detail below. The issuance of preferred shares, while providing flexibility in connection with possible acquisitions and other corporate purposes, could adversely affect the voting power of holders of common shares and the likelihood that such holders will receive dividend payments and payments upon liquidation. In addition, the issuance of preferred shares could, among other things, have the effect of delaying, deferring or preventing a change in control of our company or other corporate action and could adversely affect the market price of our common shares and the voting and other rights of the holders of our common shares. No rights, privileges, restrictions or conditions attached to a series of preferred shares shall confer on a series a priority in respect of dividends or return of capital over any other series of preferred shares that are then outstanding. If any cumulative dividends or amounts payable on return of capital in respect of a series of preferred shares are not paid in full, all series of the preferred shares participate ratably in respect of accumulated dividends and return of capital.

### Series 1 Preferred Shares

**Rank.** In the event of our liquidation, dissolution or winding up or other distribution of our assets among our shareholders for the purpose of winding up our affairs, the holders of Series 1 preferred shares are entitled to all of our remaining property and assets *pari passu* on a share for share basis with the holders of our common shares.

**Conversion.** Each Series 1 preferred share is convertible into one common share at any time at the holder's option without payment of any additional consideration, provided that any such conversion must be for at least the lesser of (i) 100,000 Series 1 preferred shares, (ii) the remaining number of Series 1 preferred shares then held by such holder and (iii) such other number of Series 1 preferred shares as agreed between us and such holder. Holders of the Series 1 preferred shares are prohibited from converting Series 1 preferred shares into common shares if, as a result of such conversion, the holder, together with its affiliates, would beneficially own more than 9.99% of the total number of common shares issued and outstanding immediately after giving effect to such conversion, which we refer to as the Beneficial Ownership Limitation, provided that the holder may reset the Beneficial Ownership Limitation to a higher or lower number (not to exceed 19.99% of the total number of common shares issued and outstanding immediately after giving effect to a conversion) upon providing written notice to us. Any such notice providing for an increase to the Beneficial Ownership Limitation will be effective 61 days after delivery to us.

Each Series 1 preferred share is also convertible into one common share at any time at our option without payment of additional consideration, provided that prior to any such conversion, the holder, together with its affiliates, beneficially owns less than 5.00% of the total number of common shares issued and outstanding and such conversion will not result in the holder, together with its affiliates, beneficially holding more than 5.00% of the total number of common shares issued and outstanding immediately after giving effect to such conversion.

In the event of a change of control, holders of Series 1 preferred shares shall be issued one common share for each outstanding Series 1 preferred share held immediately prior to the change of control (without regard to the Beneficial Ownership Limitation), and following such conversion, will be entitled to receive the same kind and amount of securities, cash or property that a holder of common shares is entitled to receive in connection with such change of control.

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**Voting Rights.** The holders of the Series 1 preferred shares will not be entitled to receive notice of or to attend any meeting of the shareholders and will not be entitled to vote at any such meeting. Notwithstanding the foregoing, the holders of the Series 1 preferred shares are entitled to receive notice of and attend any meeting of the shareholders and vote on all matters on which the common shares are entitled to vote, voting together with the common shares on an as-converted basis and as a single class, provided that the voting rights of any holder shall not exceed the Beneficial Ownership Limitation notwithstanding any voting or other rights the holder may have at law or otherwise. In no case shall a Series 1 preferred share be entitled to more than one vote on an as-converted basis. Any Series 1 preferred shares that are ineligible to convert into common shares due to the Beneficial Ownership Limitation, measured as of a given record date that applies for a shareholder meeting, shall be deemed to be non-voting securities.

We may not, without the affirmative vote of the holders of a majority of the then outstanding Series 1 preferred shares, (i) alter or change adversely the powers, preferences or rights given to the Series 1 preferred shares or alter or amend or repeal any provision of, or add any provision to, our articles or bylaws, or file any articles of amendment, if such action would adversely alter or change the rights, privileges, restrictions and conditions provided for the benefit of the Series 1 preferred shares, or (ii) enter into any agreement with respect to any of the foregoing.

**Transferability.** Prior to any sale, transfer or other disposition of Series 1 preferred shares, the holder must provide us with prior written notice at least three trading days in advance. No transfers may be affected unless the number of Series 1 preferred shares being transferred is at least the lesser of (i) 100,000 Series 1 preferred shares, (ii) the remaining number of Series 1 preferred shares then held by such holder and (iii) such other number of Series 1 preferred shares as agreed between us and such holder.

**Dividends.** Holders of the Series 1 preferred shares are entitled to receive dividends (other than dividends in the form of common shares) on the Series 1 preferred shares (without regard to the Beneficial Ownership Limitation) if, as and when declared by our board of directors on the common shares. All dividends which our board of directors may determine to declare and pay must be declared and paid in equal or equivalent amounts per share on all of the Series 1 preferred shares in priority to the holders of the common shares.

**Adjustments.** If the common shares are subdivided, consolidated, reclassified or otherwise changed, the Series 1 preferred shares will be subdivided, consolidated, reclassified or otherwise changed in the same proportion and in the same manner. If the common shares are exchanged or changed into other securities, cash or other property, the Series 1 preferred shares when converted will be converted into such other securities, cash or other property in the same manner. If the common shares are converted into or exchanged for the right to receive more than one type of consideration, the consideration for which the Series 1 preferred shares are exchangeable will be deemed to be the weighted average of the types and amounts of consideration received by the holders of common shares.

**Redemption.** We may not redeem the Series 1 preferred shares.

#### **Corporate Governance**

Under the CBCA, we are required to hold a general meeting of our shareholders at least once every year at a time and place determined by our board of directors, provided that the meeting must not be held later than 15 months after the preceding annual general meeting and no later than six months after the end of the preceding financial year. The CBCA requires that meetings of shareholders shall be held at any place within Canada as our board of directors may from time to time determine. A notice to convene a meeting, specifying the date, time and location of the meeting must be sent to shareholders, to each director and the auditor not less than 21 days prior to the meeting or such other minimum period as required by the applicable securities laws. Under the CBCA, shareholders entitled to notice of a meeting may waive or reduce the period of notice for that meeting, provided applicable securities laws requirements are met.

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Under the CBCA, all business transacted at a special meeting of shareholders and all business transacted at an annual meeting of shareholders, except consideration of the financial statements, auditor's report, election of directors and re-appointment of the incumbent auditor, is deemed to be special business. Notice of a meeting of shareholders at which special business is to be transacted shall state (a) the nature of that business in sufficient detail to permit the shareholder to form a reasoned judgment thereon; and (b) the text of any special resolution to be submitted to the meeting.

Under the CBCA, our board of directors has the power at any time to call a special meeting of our shareholders. In addition, the holders of not less than 5% of our shares that carry the right to vote at a meeting sought to be held can also requisition our board of directors to call a meeting of our shareholders for the purposes stated in the requisition. If our board of directors does not call the meeting within 21 days after receiving the requisition, our shareholders can call the meeting and the expenses reasonably incurred by such shareholders in requisitioning, calling and holding the meeting must be reimbursed by us.

Those entitled to vote at a meeting are entitled to attend meetings of our shareholders. Every shareholder entitled to vote may appoint a proxyholder to attend the meeting in the manner and to the extent authorized and with the authority conferred by the proxy. Directors, auditors, legal counsels, secretary (if any), and any other persons invited by the chair of the meeting or with the consent of those at the meeting are entitled to attend any meeting of our shareholders but will not be counted in quorum or be entitled to vote at the meeting unless he or she or it is a shareholder or proxyholder entitled to vote at the meeting.

#### **Certain Takeover Bid Requirements**

Unless such offer constitutes an exempt transaction, an offer made by a person, an "offeror", to acquire outstanding shares of a Canadian entity that, when aggregated with the offeror's holdings (and those of persons or companies acting jointly with the offeror), would constitute 20% or more of the outstanding shares in a class, would be subject to the take-over provisions of Canadian securities laws. The foregoing is a limited and general summary of certain aspects of applicable securities law in the provinces and territories of Canada, all in effect as of the date hereof.

In addition to those takeover bid requirements noted above, the acquisition of our shares may trigger the application of statutory regimes including among others, the Investment Canada Act (Canada) and the Competition Act (Canada).

Limitations on the ability to acquire and hold our common shares may be imposed by the Competition Act (Canada). This legislation permits the Commissioner of Competition, or the Commissioner, to review any acquisition of control over a significant interest in us. This legislation grants the Commissioner of Competition jurisdiction to challenge an acquisition before the Canadian Competition Tribunal on the basis that it would, or would be likely to, substantially prevent or lessen competition in any definable market in Canada.

This legislation requires any person who intends to acquire our common shares to file a notification with the Canadian Competition Bureau if certain financial thresholds are exceeded and if that person (and their affiliates) would hold more than 20% of our common shares. If a person already owns 20% or more of our common shares, a notification must be filed when the acquisition of additional shares would bring that person's holdings to over 50%. Where a notification is required, the legislation prohibits completion of the acquisition until the expiration of a statutory waiting period, unless the Commissioner first provides written notice that the acquisition will not be challenged. Where the waiting period has expired and such a written notice has not been provided, or where a notification is not required, the parties may complete the acquisition, though the Commissioner may still challenge it within one year from completion.

There is no limitation imposed by Canadian law or our articles on the right of non-residents to hold or vote our common shares, other than those imposed by the Investment Canada Act.

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The Investment Canada Act requires any person that is a “non-Canadian” (as defined in the Investment Canada Act) who acquires control of an existing Canadian business, where the acquisition of control is not a reviewable transaction, to file a post-closing notification form with the Investment Review Division of the Canadian government. The Investment Canada Act generally prohibits the implementation of a reviewable transaction unless, after review, the relevant minister is satisfied that the investment is likely to be of net benefit to Canada. Under the Investment Canada Act, direct acquisition of control of us through the acquisition of our common shares (or the acquisition of all or substantially all our assets) by a non-Canadian investor who is a Trade Agreement country investor, including a U.S. investor, but not a state-owned enterprise, would be reviewable only if our enterprise value (as determined pursuant to the Investment Canada Act) exceeds CAD\$1.613 billion for 2020 (increasing annually on the basis of a prescribed formula in the Investment Canada Act to reflect changes in the Canadian gross domestic product). If the acquisition of control of us is by a non-Canadian that is not a Trade Agreement country investor or a state-owned enterprise, but is a World Trade Organization member country investor, the acquisition of control would be reviewable only if our enterprise value exceeds CAD\$1.075 billion for 2020 (increasing annually on the basis of a prescribed formula in the Investment Canada Act to reflect changes in the Canadian gross domestic product). If the acquisition of control of us is by a state-owned enterprise that is a non-Canadian who is a World Trade Organization member country investor, including a U.S. investor, the acquisition of control would be reviewable only if the value of our assets was equal to or greater than CAD\$428 million for 2020 (subject to an annual adjustment on the basis of a prescribed formula in the Investment Canada Act to reflect changes in Canadian gross domestic product).

The acquisition of a majority of the voting interests of an entity is deemed to be acquisition of control of that entity (more than 50% of voting shares). The acquisition of less than a majority but one-third or more of the voting shares of a corporation or an equivalent undivided ownership interest in the voting shares of a corporation is presumed to be an acquisition of control of that corporation unless it can be established that, on the acquisition, the corporation is not controlled in fact by the acquirer through the ownership of voting shares. The acquisition of less than one-third of the voting shares of a corporation is deemed not to be an acquisition of control of that corporation. Certain transactions in relation to our common shares would be exempt from review by the Investment Canada Act including:

- the acquisition of our common shares by a person in the ordinary course of that person’s business as a trader or dealer in securities;
- the acquisition of control of us in connection with the realization of security granted for a loan or other financial assistance and not for any purpose related to the provisions of the Investment Canada Act; and
- the acquisition of control of us by reason of an amalgamation, merger, consolidation or corporate reorganization following which ultimate direct or indirect control in fact of us, through the ownership of our voting shares, remains unchanged.

Under the national security regime in the Investment Canada Act, a review on a discretionary basis may also be undertaken by the federal government in respect of a much broader range of investments by a non-Canadian to “acquire, in whole or in part, or to establish an entity carrying on all or any part of its operations in Canada.” The relevant test is whether such an investment by a non-Canadian could be “injurious to national security.” Review on national security grounds is at the discretion of the federal government and may occur on a pre- or post-closing basis.

There is no law, governmental decree or regulation in Canada that restricts the export or import of capital or which would affect the remittance of dividends or other payments by us to non-Canadian holders of our common shares or preferred shares, other than withholding tax requirements.

Neither our articles nor by-laws contain any change of control limitations with respect to a merger, acquisition or corporate restructuring that involves us.

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This summary is not a comprehensive description of relevant or applicable considerations regarding such requirements and, accordingly, is not intended to be, and should not be interpreted as, legal advice to any prospective purchaser and no representation with respect to such requirements to any prospective purchaser is made. Prospective investors should consult their own Canadian legal advisors with respect to any questions regarding securities law in the provinces and territories of Canada.

### **Actions Requiring a Special Majority**

Under the CBCA, certain corporate actions require the approval of a special majority of shareholders, meaning holders of shares representing not less than 66 2/3% of those votes cast in respect of a shareholder vote addressing such matter. Those items requiring the approval of a special majority generally relate to fundamental changes with respect to our business, and include among others, resolutions: (i) amending our articles; (ii) approving an amalgamation; (iii) approving a continuance; and (iv) providing for a sale, lease or exchange of all or substantially all of our property.

### **Advance Notice Procedures and Shareholder Proposals**

Under the CBCA, shareholders may make proposals for matters to be considered at the annual general meeting of shareholders. Such proposals must be sent to us in advance of any proposed meeting by delivering a timely written notice in proper form to our registered office in accordance with the requirements of the CBCA. The notice must include information on the business the shareholder intends to bring before the meeting.

In addition, our by-laws require that shareholders provide us with advance notice of their intention to nominate any persons, other than those nominated by management, for election to our board of directors at a meeting of shareholders.

These provisions could have the effect of delaying until the next shareholder meeting the nomination of certain persons for director that are favored by the holders of a majority of our outstanding voting securities.

### **Ownership and Exchange Controls**

There is currently no law, governmental decree or regulation in Canada that restricts the export or import of capital, or which would affect the remittance of dividends, interest or other payments by us to non-resident holders of our common shares, other than withholding tax requirements.

There is currently no limitation imposed by Canadian law or our articles or by-laws on the right of non-residents to hold or vote our common shares, other than those imposed by the Investment Canada Act and the Competition Act (Canada). These acts will generally not apply except where a control of an existing Canadian business or company, which has Canadian assets or revenue, or enterprise value (as applicable) over a certain threshold, is acquired and will not apply to trading generally of securities listed on a stock exchange.

### **Listing**

Our common shares are listed on the Nasdaq Global Market under the symbol "XENE."

March 19, 2019

**Confidential**

**Via Electronic Mail**

Robin Sherrington

Dear Robin,

**Re: Amended and Restated Employment Agreement**

We are pleased to offer you this Amended and Restated Employment Agreement which replaces and supersedes your earlier Employment Agreement. You will be credited for all purposes with your service to the Company back to your start date of May 1, 2001. As of March 19, 2019 (the "**Effective Date**"), you will continue to be engaged by the Company in the full-time position of Executive Vice President, Strategy & Innovation.

**A. Base Salary.** Retroactive to January 1, 2019, you will earn a base salary of \$318,555 USD per year, less statutory and other applicable deductions as required, for all work and services you perform for the Company (the "**Base Salary**"). The Base Salary is payable semi-monthly in arrears in accordance with the Company's applicable payroll policies. The US dollar amount of your semi-monthly pay will be converted to Canadian dollars at the Bank of Canada exchange rate approximately five (5) days prior to each pay date and paid in Canadian dollars. You hereby agree and understand that the exchange rate between US and Canadian dollars may vary either in your favour or in Xenon's favour (the "**Exchange Rate Variance**"), and you accept that such Exchange Rate Variance is an accepted term and condition of your employment.

**B. Annual Discretionary Bonus.** In addition to your Base Salary, you are eligible to earn an annual discretionary bonus, less statutory and other applicable deductions as required, of up to forty percent (40%) of your base salary earnings actually earned in the applicable calendar year of service, in Canadian dollars. Any bonus payable will be paid in Canadian dollars. The payment and amount of the annual bonus is within the sole discretion of the Board of Directors (the "**Board**") and will be evaluated in the first quarter of each year in relation to the achievement of corporate objectives for the previous year. Such objectives will be established annually by the Board in its sole discretion. Bonuses are not earned until paid.

**C. Annual Review.** The Company will conduct an annual review of your compensation package, including your salary and bonus percentage, in accordance with its policies. Any adjustment to the same is at the sole discretion of the Company provided that the Base Salary benchmarked in US dollars will not be reduced without your consent and subject to Sections L and M of this Agreement. You will be paid in Canadian dollars, but the Company may, at its sole discretion, benchmark your compensation in US dollars based on the peer group that is identified from time to time. You hereby agree and acknowledge that the Company has no control over the applicable foreign currency exchange rate and that your compensation in Canadian dollars may be reduced compared to the previous year because of such applicable exchange rate. You further agree and acknowledge that such lower compensation will not constitute constructive dismissal if solely due to the then applicable foreign currency exchange rate.

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**D. Expense Reimbursement.** In accordance with its expense policy, as amended from time to time, the Company will reimburse any authorized expenses actually and reasonably incurred in the course of performing your employment duties. The Company will also provide to you, for the duration of your employment, any necessary work tools, such as a laptop computer and mobile phone. Subject to approval by the Company, you will also be reimbursed for out-of-pocket expenses incurred for attending courses or workshops related to your employment duties.

**E. Reporting Structure/Responsibilities.** You will continue to report to the CEO. You will perform the responsibilities and duties of your position, as described in Schedule A, and subject to Sections L and M, such other responsibilities and duties as may be reasonably requested by the Company from time to time. You will at all times: (i) conform to the reasonable and lawful directions of the Company and the Board; (ii) adhere to all applicable Company policies; (iii) give the Company the full benefit of your knowledge, expertise, skill and ingenuity; (iv) well and faithfully serve the Company; (v) devote your best efforts to furthering the interests of the Company; and (vi) exercise the degree of care, diligence and skill that a prudent executive would exercise in comparable circumstances.

You will not during your employment with the Company, be employed by, or provide products or services of any nature whatsoever to, any other person, company, organization or other entity without prior written permission from the Company. This does not restrict you from performing reasonable volunteer activities; however, you must obtain the consent of the Company if you wish to serve on a board of directors or advisory board, or if you perform any paid work or services for other organizations. Schedule B contains a description of all such appointments and positions that you currently occupy, and all paid work and services you currently provide to outside organizations, to which the Company confirms that it provides its permission.

**F. Vacation and Sick Days.** In accordance with the Company's policies, you will earn twenty (20) days of paid vacation per calendar year on a pro rata basis. You may also be entitled to other leaves, including without limitation, an additional allotment of paid sick days and statutory holidays, as provided in the Company's policies during the applicable period. Accrued but unused paid time off and sick days will expire in accordance with the Company's policies, as amended from time to time.

**G. Non-Disclosure, Non-Solicitation & Non-Competition Agreement.** The Employee Non-Disclosure, Non-Solicitation and Non-Competition Agreement that you signed dated October 3, 2014 continues to be in full force and effect. Please note that this agreement also deals with confidentiality and the ownership of intellectual property developments. You continue to agree that compliance with its provisions is reasonable and a necessary requirement in our highly competitive industry, and may be required by our agreements with our suppliers, customers, and distributors.

**H. Stock Options.** You will continue to be eligible to participate in Xenon's 2014 Equity Incentive Plan, a copy of which is attached. Nothing in this Agreement will affect in any way the stock options granted to you by the Company to date, all of which will, except as expressly provided in this Agreement, continue to vest and be exercisable in accordance with their terms while you are employed by the Company.

**I. Benefits.** You will continue to be eligible to participate in the Company's employee group benefit plans, as amended from time to time, subject to the Company's policies, eligibility rules, and terms established by the service providers, as amended from time to time. You will continue to be eligible to participate in the Company's current Group RRSP Plan, under which the Company will match your contributions up to a maximum of 5% of your Base Salary, in the same currency in which your Base Salary is paid.

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**J. Taxes.** Any taxes applicable to your employment compensation package with the Company will be deducted and remitted to the appropriate authorities in accordance with the Company's standard policies and the law.

If you work in a second tax jurisdiction at the Company's request, the Company will cover the reasonable costs for you to use the services of the Company's tax adviser or another adviser mutually agreed upon by the Parties to prepare your home and host country tax returns for any year during which you are required to file tax returns in more than one country as a result of your employment with the Company.

**K. Insurance and Indemnification.** As a corporate and/or executive officer of the Company, during your employment with the Company, you will be covered by its Directors' and Officers' Liability Insurance Policy and such other indemnity policy, agreement or commitment established by the Company, subject to the terms of the Insurance Policy and other policy, agreement or commitment and any amendments made from time to time at the Board's discretion provided that no amendment will substantially reduce your entitlements. Your coverage under such Insurance Policy and any other policy, agreement, or commitment, will continue after your employment ends in respect of your employment. The Indemnification Agreement signed dated November 4, 2014 continues to be in full force and effect.

**L. Change of Control.** In this Agreement:

- a. **"Average Bonus"** means an amount that is (i) the sum of the annual bonus awards (expressed as a percentage of the applicable year's Base Salary) that you earned in each of the three (3) completed calendar years preceding the date your employment with the Company terminates, divided by (ii) three (3), multiplied by (iii) your Base Salary at the time your employment with the Company terminates [for example:  $(15\%+5\%+10\%)/3 = 10\%$  of Base Salary]. If you have been employed for more than one (1) but fewer than three (3) completed calendar years of service, then your "Average Bonus" will be the average of the annual bonus awards (as expressed as a percentage of the applicable year's Base Salary) that you have received for the completed calendar year(s) preceding the date of your employment with the Company terminates.
- b. **"Change of Control"** means:
- (i) the acquisition by any person or persons acting jointly or in concert (as determined by the Securities Act) ("**Person**"), whether directly or indirectly, of voting securities of the Company that, together with all other voting securities of the Company held by such Person, constitute in the aggregate more than 50% of all outstanding voting securities of the Company; provided, however, that for purposes of this subsection, the acquisition of additional securities by any one Person, who owns more than 50% of all outstanding voting securities of the Company will not be a Change of Control;
  - (ii) an amalgamation, arrangement or other form of business combination of the Company with another corporation that results in the holders of voting securities of that other corporation holding, in the aggregate, more than 50% of all outstanding voting securities of the corporation resulting from the business combination; provided, however, that for purposes of this subsection, the acquisition of additional securities by any one Person, who owns more than 50% of all outstanding voting securities of the Company will not be a Change of Control; or
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- (iii) a change in the ownership of a substantial portion of the Company's assets, including the sale, lease, transfer or exchange of a substantial portion of the Company's assets, to another Person, other than in the ordinary course of business of the Company, which occurs on the date that such Person acquires (or has acquired during the twelve (12) month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than fifty percent (50%) of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions; provided, however, that for purposes of this subsection (iii), the following will not constitute a change in the ownership of a substantial portion of the Company's assets: (A) a transfer to a Related Entity, or (B) a transfer of assets by the Company to: (1) a stockholder of the Company (immediately before the asset transfer) in exchange for or with respect to the Company's stock, (2) an entity of which the Company has Control, (3) a Person, that owns, directly or indirectly, fifty percent (50%) or more of the all outstanding voting securities of the Company, or (4) an entity of which a Person described in this subsection (iii)(B)(3) has Control. For purposes of this subsection (iii), gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets;

provided, however, that a Change in Control will not be deemed to have occurred if such Change in Control results solely from the issuance, in connection with a *bona fide* public offering, financing or series of financings by the Company, of voting securities of the Company or any rights to acquire voting securities of the Company which are convertible into voting securities.

Further and for the avoidance of doubt, a transaction will not constitute a Change of Control if: (x) its sole purpose is to change the state or jurisdiction of the Company's incorporation, or (y) its sole purpose is to create a holding company the voting securities of which will be owned in substantially the same proportions by the persons who held the Company's voting securities immediately before such transaction.

c. **"Good Reason"** means any of the following:

- (i) any unilateral change or series of changes to your employment responsibilities, reporting relationship, or status within the Company, such that immediately after such a change or series of changes to your responsibilities, reporting relationship, and status, taken as a whole, and taking into account the size and complexity of the business of the Company at that time, are substantially less than those assigned to you immediately prior to such change or series of changes; or
  - (ii) a material reduction by the Company in your Base Salary or other compensation as in effect prior to the Change of Control that would constitute a constructive dismissal at common law; or
  - (iii) the taking of any action by the Company, or the failure by the Company to take any action, that would materially and adversely affect your participation in, or materially reduce your aggregate benefits under, the total package of long-term incentive, bonus, compensation, RRSP, life insurance, health, accidental disability and other similar plans in which you are participating prior to the action by the Company or the failure by the Company to take any action; or
  - (iv) the unilateral requirement that you relocate to a new location that is both (a) more than 60 kilometers from your previous work location and (b) more than 60 kilometers from your primary residence; or
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- (v) failure or refusal of the Successor Company to offer you terms and conditions of employment, including the provisions of Section M of this Agreement, that are substantially the same as the provisions of this Agreement; or
- (vi) subject to the terms of this Agreement, any reason which would be considered to amount to constructive dismissal by an arbitrator under the laws applicable in British Columbia;

provided that any change or series of changes in reporting relationships alone will not constitute good reason.

- d. **“Successor Company”** means, in connection with a Change of Control, the surviving or acquiring company or entity.

**M. Termination Without Cause or Resignation for Good Reason in Connection With or Following A Change of Control.**

In the event of (i) a termination without cause or (ii) resignation for Good Reason, in either case, occurring within three (3) months prior to a Change of Control and related or connected to that Change of Control or occurring within twelve (12) months after a Change of Control, your employment will end on the date it is terminated without cause by the Company or Successor Company or the date terminated by you for Good Reason, in which case the Company or Successor Company will provide you with the notice or pay in lieu of notice to which you are entitled under the British Columbia Employment Standards Act (the **“Statutory Notice”**). In exchange for and conditional upon you signing and returning a full and final Release of all claims in the form attached hereto as Schedule C, the Company or Successor Company will provide you with the following:

- a. payment equal to twelve (12) months' Base Salary, plus one (1) additional month of Base Salary for every year of consecutive service with the Company and Successor Company, up to a combined maximum of eighteen (18) months (the **“COC Payment Period”**). The COC Payment Period is inclusive of, and not in addition to, the Statutory Notice;
  - b. payment of 100% of your then-applicable bonus eligibility calculated on your then-applicable annual Base Salary (i.e. not prorated for the partial year worked), less statutory and other applicable deductions as required.
  - c. the contributions to your retirement savings plan the Company would have paid on your behalf during the COC Payment Period;
  - d. notwithstanding any provision in the Company's Amended and Restated Stock Option Plan (the **“Pre-IPO Equity Plan”**), the Equity Incentive Plan and any subsequent deferred compensation plan to the contrary:
    - (i) immediate vesting of all unvested stock options and other deferred compensation awards granted to you by the Company or the Successor Company; and
    - (ii) with respect to stock options granted pursuant to the Pre-IPO Equity Plan and any prior stock option plan, continued exercise rights up to ninety (90) days after the end of the Payment Period, at which time, such rights will be null and void; and
    - (iii) continued exercise rights for the longer of the period stipulated in the applicable plan or grant and six (6) months after the date your employment actually terminates (i.e. the last day you are actually at work); and
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- e. subject to the applicable insurer's terms of coverage, at the Company's discretion, the Company will arrange for you to continue to receive group benefits insurance coverage up to the earlier of (i) the end of the COC Payment Period, or (ii) the date you commence new work or employment with comparable coverage. In the event the insurer does not continue coverage, the Company will pay you an amount equivalent to the cost of the monthly premiums the Company would have paid on your behalf for the group benefits insurance coverage that are terminated.

In the case of Good Reason, you must within three (3) months after the occurrence of Good Reason provide the Company or Successor Company with thirty (30) days' written notice of Good Reason during which you will continue to provide services to the Company or Successor Company. Where the Good Reason is based in whole or in part on a series of changes, the notice period will commence on the occurrence of the last change in the series. Within your thirty (30) day working notice, the Company or the Successor Company may correct, reverse, rectify or otherwise resolve the change or series of changes that constitute Good Reason, in which case your employment with the Company or Successor Company will continue.

The payments described above are inclusive of any termination or severance pay owing to you under applicable employment standards legislation. You further agree that you will not be eligible for any additional payment pursuant to the termination sections below (e.g. you will **not** be entitled to receive both the payments described in this Section M and the Termination Without Cause payments or notice described below in Section P).

**Termination:**

**N. Resignation.** If for any reason you should wish to leave the Company, you will provide the Company with three (3) months' prior written notice of your intention (the "**Resignation Period**"). You agree that the Company may, in its sole and unfettered discretion, waive the Resignation Period in whole or in part and end your employment immediately by delivering to you a written notice promptly followed by payment of the Base Salary due to you during the remainder of the Resignation Period and any pay accrued and owing under this Agreement up to the date of such notice. It is further expressly agreed that you will not be entitled to any bonus or pro rata bonus after you give notice of resignation. For example, if you give notice of resignation partway during the calendar year, or any time prior to the bonus payment date following that calendar year, you will not be entitled to any bonus for that calendar year.

**O. Termination for Cause.** The Company may terminate your employment at any time for cause, effective upon delivery by the Company to you of a written notice of termination of your employment for cause. You will not be entitled to receive any further pay or compensation (except for pay, if any, accrued and owing under this Agreement up to the date of termination of your employment), severance pay, notice, payment in lieu of notice, benefits or damages of any kind, and for clarity, without limiting the foregoing, you will not be entitled to any bonus or pro rata bonus payment that has not already been awarded by the Company.

**P. Termination Without Cause.**

(This Section P does not apply to a termination without cause that occurs within three (3) months prior to a Change of Control and in relation or connection to that Change of Control or within twelve (12) months after a Change of Control – such terminations are covered by Section M).

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The Company may terminate your employment without cause at any time upon providing you with the notice or pay in lieu of notice to which you are entitled under the Statutory Notice. In exchange for and conditional upon you signing and returning a full and final Release of all claims in the form attached hereto as Schedule C, the Company will provide you with notice or pay in lieu of notice beyond that required by the Statutory Notice – in particular, the Company will provide you with working notice of termination (in which case all of your terms and conditions of employment including compensation and benefits, subject to the applicable insurer's terms of coverage, will continue during the working notice period, or Base Salary continuance, or a lump sum payment of Base Salary, or an equivalent combination of any of the foregoing, in the amount of twelve (12) months plus one (1) additional month for every one (1) year of consecutive service with the Company, up to a combined maximum of eighteen (18) months (the **"Notice Period"**).

It is within the Company's sole discretion to decide whether to provide working notice, Base Salary Continuance, or a lump sum payment of Base Salary, or a combination of the foregoing, for the Notice Period.

The Notice Period is inclusive of, and not in addition to, the Statutory Notice. If the Company elects to provide Base Salary Continuance or a lump sum payment of Base Salary for all or part of the Notice Period, the portion of the Notice Period covered by such payment(s) shall be defined as the **"Payment Period"**.

The parties further agree as follows, also conditional upon you signing and returning a full and final Release of all claims in the form attached hereto as Schedule C:

- (i) subject to the applicable insurer's terms of coverage, the Company will arrange for you to continue to receive group benefits insurance coverage up to the earlier of (i) the end of the Notice Period, or (ii) the date you commence full-time employment. In the event the insurer does not continue coverage, the Company will pay you an amount equivalent to the cost of the monthly premiums the Company would have paid on your behalf for the group benefits insurance coverage that are terminated;
  - (ii) you will receive an Average Bonus pro-rated for the period of the calendar year that you actually worked, up to your last day at work, less statutory and other applicable deductions as required. For example, if your last day of work is March 31, you will receive 3 months of your Average Bonus. Payment of your pro-rated Average Bonus will be within four (4) weeks of the termination date provided that if a bonus has not yet been determined for the preceding completed calendar year, the Company will first make that determination in the ordinary course using relevant criteria in a manner consistent with prior practice so that the Average Bonus can then be determined and paid. For clarity, it is expressly agreed that you will not be entitled to any bonus whatsoever for any period of time after your last actual day at work, including during the Payment Period;
  - (iii) the Company will pay the contributions to your retirement savings plan the Company would have paid on your behalf during the Notice Period; and
  - (iv) notwithstanding any provision in this Agreement or in the Pre-IPO Equity Plan, the Equity Incentive Plan and any subsequent incentive compensation plan to the contrary, the Company will extend the vesting and exercise rights of your vested and unvested options and other deferred compensation as follows:
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- a. for stock options granted under the Pre-IPO Equity Plan and any prior stock option plan, the stock options will continue vesting until the end of the Notice Period, at which time all unvested options will be null and void, and all vested stock options will be exercisable until the earlier of the original expiry date of the options and the date that is three (3) months following the end of the Notice Period; and
- b. for stock options and other deferred compensation granted under the 2014 Equity Incentive Plan and any subsequent incentive compensation plan, the stock options and other deferred compensation will continue to vest for a period of three (3) months after the date your employment terminates and all vested stock options and other deferred compensation will be exercisable until the earlier of the original expiry date of the stock options and deferred compensation and the date that is six (6) months after the date your employment terminates.

Any payment in lieu of notice provided to you will be inclusive of any termination or severance pay owing to you under applicable employment standards legislation and subject to statutory withholdings and other regular payroll deductions. You will not be entitled to receive any further pay or compensation except (i) as expressly set out in this Agreement, and (ii) the pay, if any, accrued and owing under this Agreement up to the date of termination of your employment.

**Q. Work Permit.** As a condition of your employment, you may become required to work in other jurisdictions where the Company or the Company's affiliates maintain an office. In that event, the continuance of your employment with the Company will become contingent upon your signing and complying with an Employee Secondment Agreement Letter, receiving authorization to work in that or those other jurisdiction(s), and to your maintaining such status. The Company will support your application for any such authorization(s).

**R. FDA Debarment.** As a condition of your employment, you must certify that you are not under investigation by the FDA for debarment action, have not been debarred under the Generic Drug Enforcement Act of 1992 (21 U.S.C. 301 et seq.), and are not otherwise being investigated, restricted or disqualified from performing services relating to clinical trials by the FDA or any other regulatory authority or professional body in any other jurisdiction. If, during the course of your employment with Xenon, you become subject to such investigation or otherwise are restricted or disqualified, you will promptly inform Xenon's Legal Department of such event.

#### **S. Miscellaneous**

**No Implied Entitlement.** Other than as expressly provided herein or in any of the Company's policies, as amended from time to time at the Company's sole discretion, you will not be entitled to receive any further pay or compensation, severance pay, notice, payment in lieu of notice, incentives, bonuses, benefits or damages of any kind.

**Continued Effect.** Notwithstanding any changes in the terms and conditions of your employment which may occur in the future, including any changes in position, duties or compensation, the termination provisions in this Agreement will continue to be in effect for the duration of your employment with the Company unless otherwise amended in writing and signed by the Company.

**Authorization to Deduct Debts.** If, on the date you leave employment, you owe the Company any money, you hereby authorize the Company to deduct any such debt from your final pay or any other payment due to you to the extent permitted by the *BC Employment Standards Act* if applicable. Any remaining debt will be immediately payable to the Company and you agree to satisfy such debt within fourteen (14) days after any demand for repayment.

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**Dispute Resolution.** In the event of a dispute arising out of or in connection with this Agreement, or in respect of any legal relationship associated with it or from it, which does not involve the Company seeking a court injunction or other injunctive or equitable relief to protect its business, confidential information or intellectual property, or enforce the covenants hereunder, that dispute will be resolved confidentially as follows:

- a. *Amicable Negotiation* – The parties agree that, both during and after the performance of their responsibilities under this Agreement, each of them will make *bona fide* efforts to resolve any disputes arising between them by amicable and expeditious negotiations.
- b. *Mediation* – If the parties are unable to negotiate resolution of a dispute, either party may with the agreement of the other party refer the dispute to mediation by providing written notice to the other party. If the parties cannot agree on a mediator within fifteen (15) days after receipt of the notice to mediate, then either party may make application to the British Columbia Arbitration and Mediation Society to have one appointed. The mediation will be held in Vancouver, BC, in accordance with the British Columbia International Commercial Arbitration Centre's (the "BCICAC") Commercial Mediation Rules, and each party will bear its own costs, including one-half share of the mediator's fees.
- c. *Arbitration* – If, after mediation, the parties have been unable to resolve a dispute or at any time if mediation is not undertaken, either party may refer the dispute for final and binding arbitration by providing written notice to the other party. If the parties cannot agree on an arbitrator within fifteen (15) days after receipt of the notice to arbitrate, then either party may make application to the British Columbia Arbitration and Mediation Society to appoint one. The arbitration will be held in Vancouver, BC, in accordance with the BCICAC's Shorter Rules for Domestic Commercial Arbitration. Each party will bear its own costs, including one-half share of the arbitrator's fees, provided that the arbitrator will have discretion to award costs against either party.

**Legal Counsel.** You have been advised by the Company to retain independent legal advice with respect to this Employment Agreement.

**Employment Standards Act.** The parties hereby agree that if any provision in this Employment Agreement, in any circumstance, provides for less than what is required by the *BC Employment Standards Act*, such provision shall be replaced with the minimum provision(s) of the *BC Employment Standards Act*.

**Currency.** Except as otherwise specifically indicated, all monetary amounts referenced herein are in Canadian dollars.

**Severability.** If any part, article, section, clause, paragraph or subparagraph of this Agreement is held to be indefinite, invalid, illegal or otherwise voidable or unenforceable for any reason, the entire Agreement will not fail on the account thereof and the validity, legality and enforceability of the remaining provisions will in no way be affected or impaired thereby.

**Entire Understanding.** We also confirm that this Agreement and the other agreements, documents, and plans that are referred to in this Agreement (including the Non-Disclosure, Non-Solicitation and Non-Competition Agreement) set forth our entire understanding of the terms of your employment with the Company, and cancels and supersedes all previous invitations, proposals, letters, correspondence, negotiations, promises, agreements (including your former employment agreement), covenants, conditions, representations and warranties with respect to the subject matter of this Agreement. Any modifications to these employment terms must be made in writing and signed by both you and the Company.

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**Fresh Consideration.** The Company is hereby providing you with one hundred dollars (\$100) as fresh consideration for you entering into this Employment Agreement. You hereby accept the receipt and sufficiency of this fresh consideration.

**Governing Law.** This Agreement and all matters arising hereunder will be governed by and construed in accordance with the laws of the Province of British Columbia.

If you have any questions or concerns regarding the above, please do not hesitate to contact me.

To accept this Agreement on the terms set out herein, please sign where indicated below.

Yours sincerely,

**XENON PHARMACEUTICALS INC.**

/s/ Simon Pimstone  
Simon Pimstone  
CEO

Attachments:

- 1) Xenon Employee Non-Disclosure, Non-Solicitation and Non-Competition Agreement

I hereby confirm that I have read, understand and voluntarily accept the terms of this Agreement, as of the Effective Date, regardless of the actual date of signature:

/s/ Robin Sherrington    17/05/2019  
**Robin Sherrington**    **DD/MM/YYYY**

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## SCHEDULE A

### Duties and Responsibilities

Your duties and responsibilities in this position will include those listed below:

1. Identify new pipeline opportunities in R&D and implement early internal studies to ensure go/no go decisions can be made expeditiously
  2. Participate in discussions/interactions with Board on business development and commercial opportunities, as required
  3. Manage implementation of data rooms for third party diligence
  4. Manage and lead external business discussions for prospective partnerships
  5. Manage and lead internal coordination of partnering discussions
  6. Draft and negotiate terms sheets including grants of licenses, product acquisitions, scope of collaborations, and financial terms
  7. Benchmark financial terms for term sheet discussions
  8. Lead term sheet negotiations with interested third parties
  9. Review draft definitive agreements and member of negotiation team
  10. Participate in evaluating strategic corporate business opportunities including initiatives for licensing, acquisitions, mergers, joint ventures, partnerships and alliances, as required
  11. Analyze such new and current product opportunities to determine indications and their market revenue potential, Net Present Value and Internal Rate of Return, thereby evaluating a project's financial viability, contributing to the direction of clinical development and possible marketing strategies
  12. Perform sensitivity analyses such as for product pricing and indication treatment rates and the potential negative effects of competing products
  13. To use such data analytics to:
    - a. generate/ support/justify financial terms for any business negotiations and;
    - b. to generate recommendations/reports for Xenon's Senior Executives. For example, lead the market assessments of products under due diligence for in licensing/original concept opportunities
    - c. Support Investor Relations activities
  14. To form and negotiate relationships with leading researchers in fields of interest as consultants, consulting companies, payers, patients and their advocacy groups and work on projects independently and in conjunction with internal senior R&D and G&A staff
  15. To keep apprised of developments for external products that are in competition with Xenon's pipeline and provide timely reports to senior management as well as keep apprised of company analogues of Xenon
  16. Report findings and present to Xenon's Senior Executives
  17. Travel for meetings, conferences and other applicable business
  18. Other duties as required from time to time.
  19. Strictly adhere to all Xenon corporate policies, particularly those concerning confidentiality, intellectual property, and safety.
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**SCHEDULE B**

**Disclosure of Volunteer, Board and Other External Commitments**

Position

Organization

Length of Appointment/ Engagement

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## SCHEDULE C

### Form of Release

**IN CONSIDERATION OF** the terms and conditions set out in the [DATE] letter from **Xenon Pharmaceuticals Inc.** (hereinafter called "**Xenon**") to me, [NAME], and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledge, I do hereby remise, release and forever discharge Xenon, its officers, directors, servants, employees and agents, and their heirs, executors, administrators, successors and assigns, as the case may be (defined collectively as the "Releasees"), of and from any and all manner of actions, causes of action, suits, contracts, claims, damages, costs and expenses of any nature or kind whatsoever, whether in law or in equity, which as against Xenon or such persons as aforesaid or any of them, I have ever had, now have, or at any time hereafter I or my personal representatives can, shall or may have, by reason of or arising out of the termination of my employment with Xenon on or about [DATE], without limiting the generality of the foregoing, any and all claims for damages for termination of my employment, constructive termination of my employment, loss of position, loss of status, loss of future job opportunity, loss of opportunity to enhance my reputation, the timing of the termination and the manner in which it was effected, loss of bonuses, loss of shares and/or share options, loss of benefits, including life insurance and short and long-term disability benefit coverage, and any other type of damages arising from the above.

**IT IS UNDERSTOOD AND AGREED** that this Release includes any and all claims arising under the *Employment Standards Act*, *Human Rights Code*, or other applicable legislation as it relates to the termination of my employment and that the consideration provided includes any amount that I may be entitled to under such legislation.

**IT IS FURTHER UNDERSTOOD AND AGREED** that this Release is subject to compliance by Xenon with the said conditions as stipulated in the aforementioned employment agreement entered into between the undersigned and Xenon.

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**IT IS FURTHER UNDERSTOOD AND AGREED THAT XENON** will withhold and remit income tax and other statutory deductions from the aforesaid consideration and I agree to indemnify and hold harmless Xenon from any further assessments for income tax, repayment of any employment insurance benefits received by me, or other statutory deductions which may be made under statutory authority.

**IT IS FURTHER UNDERSTOOD AND AGREED** that this is a compromise and is not to be construed as an admission of liability on the part of Xenon. The terms of this Release set out the entire agreement between Xenon and me with respect to the matters described herein and are intended to be contractual and not a mere recital. If the facts on which this Release is made prove to be other than or different from the facts in that connection now known or believed to be true by the parties or either of them, the parties and each of them expressly accept and assume the risk of the facts being different and agree that all the terms of this Release shall be in all respects effective and not subject to termination, variation, or rescission by any discovery of any difference in the facts. If any part or provision of this Release or its application to any circumstance is restricted, prohibited or unenforceable, such part or provision will be ineffective only to the extent of such restriction, prohibition or unenforceability, and the remainder of the Release will remain in full force and effect.

**IT IS FURTHER UNDERSTOOD AND AGREED** that I will keep the contents of this settlement and all communication relating thereto confidential except to Revenue Canada or as is required to obtain legal and tax advice, or to enforce my rights hereunder in a court of law, or as is required by law.

**IT IS FURTHER UNDERSTOOD AND AGREED** that the law governing this Release is that of British Columbia, and the parties will resolve any disputes they have under this Release in the courts of British Columbia, provided that if, contrary to this Release, I commence, pursue, or maintain any such proceedings against any of the Releasees, I hereby irrevocably consent to such Releasee(s) relying on this Release to obtain a stay or dismissal or such proceedings.

**IT IS FURTHER UNDERSTOOD AND AGREED** that the consideration described herein was voluntarily accepted by me for the purpose of making a full and final settlement of all claims described above and that prior to agreeing to the settlement, I was advised by Xenon of my right to receive independent legal advice.

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IN WITNESS WHEREOF this Release has been executed effective the \_\_\_\_\_ (please insert date of signature).

SIGNED, SEALED AND DELIVERED

By **[NAME]** in the presence of:

_____	)	
	)	
<b>Signature of Witness</b>	)	<b>[NAME]</b> _____
_____	)	
Name of Witness	)	
_____	)	
Address	)	
_____	)	
Occupation	)	

March 20, 2019

**Confidential**

**Via Electronic Mail**

James Empfield

Dear James,

**Re: Amended and Restated Employment Agreement**

We are pleased to offer you this Amended and Restated Employment Agreement which replaces and supersedes your earlier Offer of Employment (the "**Prior Agreement**") dated January 1, 2017 with Xenon Pharmaceuticals USA Inc. (the "**Company**"), a wholly-owned subsidiary of Xenon Pharmaceuticals Inc. (the "**Parent**"). You will be credited for all purposes with your service to the Company back to your start date of February 8, 2016, when you were originally employed by Parent. As of March 20, 2019 (the "**Effective Date**"), you will continue to be engaged by the Company in the full-time position of SVP, Drug Discovery. Subject to Sections L through P below, the Company agrees to employ you, and you agree to serve the Company, on an "at-will" basis, which means that either the Company or you may terminate your employment with the Company at any time and for any or no reason, in accordance with the terms of this agreement (the "**Agreement**").

**A. Base Salary.** Retroactive to January 1, 2019, and subject to Section T below, you will earn a base salary at a rate of \$295,000 USD per year, less statutory and other applicable deductions as required, for all work and services you perform for the Company (the "**Base Salary**"). The Base Salary is payable semi-monthly in arrears in accordance with the Company's applicable payroll policies.

**B. Annual Discretionary Bonus.** In addition to your Base Salary, you are eligible to earn an annual discretionary bonus, less statutory and other applicable deductions as required, of up to forty percent (40%) of your base salary earnings actually earned in the applicable calendar year of service. The payment and amount of the annual bonus is within the sole discretion of the Board of Directors of the Company (the "**Board**"), based on the determination of the Compensation Committee of the Board of Directors of Parent (the "**Compensation Committee**") and will be evaluated in the first quarter of each year in relation to the achievement of corporate objectives for the previous year and subject to the terms and conditions of Appendix A. Such objectives will be established annually by the Compensation Committee in its sole discretion. Bonuses are not earned until paid and are contingent upon your continued employment with the Company through the date the bonus is paid. No "pro-rated" or partial bonus will be provided unless provided for in Sections L through P below or as otherwise approved by the Board, based on the determination of the Compensation Committee, in its sole discretion.

**C. Annual Review.** The Compensation Committee will conduct an annual review of your compensation package, including your salary and bonus percentage in accordance with its policies. The Compensation Committee's recommendations regarding your compensation package will be conveyed to the Board for final approval. Any adjustment to your compensation package is at the sole discretion of the Compensation Committee and the Board provided that the Base Salary will not be reduced without your consent and subject to Sections L and M of this Agreement.

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**D. Expense Reimbursement.** In accordance with its expense policy, as amended from time to time, the Company will reimburse any authorized expenses actually and reasonably incurred in the course of performing your employment duties. The Company will also provide to you, for the duration of your employment, any necessary work tools and equipment, such as a laptop computer and mobile phone. Subject to advance approval by the Company, you will also be reimbursed for out-of-pocket expenses incurred for attending courses or workshops related to your employment duties.

**E. Reporting Structure/Responsibilities.** You will report to the CEO of Parent. You agree that the Company may change the reporting structure, including the person and position to whom you report, and the people and positions who report to you. You will perform the responsibilities and duties of your position, as described in Schedule A, and subject to Sections L and M of this Agreement, such other responsibilities and duties as may be reasonably requested by the Parent and/or the Company from time to time. You will at all times: (i) conform to the reasonable and lawful directions of the Parent, the Company and the Board; (ii) adhere to all applicable Company and Parent policies; (iii) give the Company and Parent the full benefit of your knowledge, expertise, skill and ingenuity; (iv) well and faithfully serve the Company and Parent; (v) devote your full time and best efforts to furthering the interests of the Company and Parent; and (vi) exercise the degree of care, diligence and skill that a prudent executive would exercise in comparable circumstances.

You will not during your employment with the Company, be employed by, or provide products or services of any nature whatsoever to, any other person, company, organization or other entity without prior written permission from the Company, provided that you may provide services to Parent as agreed between Parent and Company as part of your duties under this Agreement (with the understanding that the compensation provided to you under this Agreement shall fully compensate you for any such services to Parent). This does not restrict you from performing reasonable volunteer activities; however, you must obtain the prior consent of the Company if you wish to serve on a board of directors or advisory board, or if you perform any paid work or services for other organizations. Schedule B contains a description of all such appointments and positions that you currently occupy, and all paid work and services you currently provide to outside organizations, to which the Company confirms that it provides its permission. The Company retains the right to revoke any consent for such outside services, especially in the event where any such services may create a conflict of interest.

**F. Paid Time Off.** You will earn twenty (20) days of paid time off per calendar year on a pro rata basis. You may use paid time off for any purpose, including vacation, sick or personal days. You may also be entitled to other leaves, including without limitation, an additional allotment of paid sick days and statutory holidays in accordance with applicable law and the Company's applicable policies, as may be in effect from time to time. Accrued but unused paid time off and sick days will expire in accordance with the Company's policies, as amended from time to time

**G. Confidentiality Agreement.** As a condition of your employment under this Agreement, you must enter into and abide by the enclosed At-Will Employment, Confidential Information, Invention Assignment, and Arbitration Agreement (the "**Confidentiality Agreement**"). Please note that this agreement also deals with, among other things, confidentiality and the ownership of intellectual property developments, and contains non-solicitation, non-competition, and other restrictive covenants. By entering into the Confidentiality Agreement, you are agreeing that compliance with its provisions is reasonable and a necessary requirement in our highly competitive industry, and may be required by our agreements with our suppliers, customers, and distributors. In the event that you leave the employ of the Company, you consent to notification by the Company to your new employer about your rights and obligations under the Confidentiality Agreement.

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**H. Stock Options.** You will continue be eligible to participate in Parent's 2014 Equity Incentive Plan, a copy of which is attached. Nothing in this Agreement will affect in any way the stock options granted to you by the Parent to date, all of which will, except as expressly provided in this Agreement, continue to vest and be exercisable in accordance with their terms while you are employed by the Company.

**I. Benefits.** You will continue to be eligible to receive and participate in the Company's employee benefits as may be established from time to time for the Company's employees, subject to the terms of the applicable plans. You will continue to be eligible to participate in any retirement savings plan that the Company may sponsor, which, subject to compliance with applicable U.S. laws, may include a Company matching contribution of up to the amount of your personal contributions to such retirement savings plan in a given tax year, subject to a cap of 5% of your Base Salary (the "**Matching Contribution**"). Alternatively, if either (a) there is no Company-sponsored retirement savings plan in which you are eligible to participate, or (b) there is a Company-sponsored retirement savings plan in which you have contributed the maximum amount permitted by law in a given tax year and applicable U.S. law does not permit receipt of the full Matching Contribution, then the Company may pay you a bonus in an amount through the Company's regular payroll so that the aggregate amount you receive for a plan year (including any portion of the Matching Contribution) is economically equivalent to the full Matching Contribution.

**J. Taxes.** Any taxes applicable to your employment compensation package with the Company and your secondment to the Parent will be deducted and remitted to the appropriate authorities in accordance with the Company's standard policies and applicable law. You acknowledge and agree that during your employment with the Company, you will be expected to provide services to the Parent pursuant to a secondment arrangement between the Company and the Parent, and that any such services may result in your owing taxes in Canada. You are advised to consult your own financial advisor.

If you work in a second tax jurisdiction at the Parent or Company's request, the Company will cover the reasonable costs for you to use the services of the Company's tax adviser or another tax adviser agreed upon by the Parties to prepare your home and host country tax returns for any year during which you are required to file tax returns in more than one country as a result of your employment with the Company.

**K. Insurance and Indemnification.** As a corporate and/or executive officer of the Company and/or of the Parent during your employment with the Company, you will be covered by Parent's Directors' and Officers' Liability Insurance Policy and such other indemnity policy, agreement or commitment established by the Company or Parent, as may be in effect from time to time, subject to the terms of the Insurance Policy and other policy, agreement or commitment and any amendments made from time to time at the discretion of the Parent's Board of Directors, provided that no amendment will substantially reduce your entitlements. Your coverage under such insurance policy and any other policy, agreement or commitment will continue after your employment with the Company ends in respect of your employment with the Company. The Indemnification Agreement you signed dated February 8, 2016 continues to be in full force and effect.

**L. Change of Control.** In this Agreement:

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- a. **“Average Bonus”** means an amount that is (i) the sum of the annual bonus awards (expressed as a percentage of the applicable year’s Base Salary) that you earned in each of the three (3) completed calendar years preceding the date your employment with the Company terminates, divided by (ii) three (3), multiplied by (iii) your Base Salary at the time your employment with the Company terminates [for example:  $(15\%+5\%+10\%)/3 = 10\%$  of Base Salary]. If you have been employed for more than one (1) but fewer than three (3) completed calendar years of service, then your “Average Bonus” will be the average of the annual bonus awards (as expressed as a percentage of the applicable year’s Base Salary) that you have received for the completed calendar year(s) preceding the date of your employment with the Company terminates
- b. **“Change of Control”** means:
- (i) the acquisition by any person or persons acting jointly or in concert (as determined by the Securities Act) (“**Person**”), whether directly or indirectly, of voting securities of the Parent that, together with all other voting securities of the Parent held by such Person, constitute in the aggregate more than 50% of all outstanding voting securities of the Parent; provided, however, that for purposes of this subsection, the acquisition of additional securities by any one Person, who owns more than 50% of all outstanding voting securities of the Parent will not be a Change of Control;
  - (ii) an amalgamation, arrangement or other form of business combination of the Parent with another corporation that results in the holders of voting securities of that other corporation holding, in the aggregate, more than 50% of all outstanding voting securities of the corporation resulting from the business combination; provided, however, that for purposes of this subsection, the acquisition of additional securities by any one Person, who owns more than 50% of all outstanding voting securities of the Parent will not be a Change of Control; or
  - (iii) a change in the ownership of a substantial portion of the Parent’s assets, including the sale, lease, transfer or exchange of a substantial portion of the Parent’s assets, to another Person, other than in the ordinary course of business of the Parent, which occurs on the date that such Person acquires (or has acquired during the twelve (12) month period ending on the date of the most recent acquisition by such person or persons) assets from the Parent that have a total gross fair market value equal to or more than fifty percent (50%) of the total gross fair market value of all of the assets of the Parent immediately prior to such acquisition or acquisitions; provided, however, that for purposes of this subsection (iii), the following will not constitute a change in the ownership of a substantial portion of the Parent’s assets: (A) a transfer to a Related Entity, or (B) a transfer of assets by the Parent to: (1) a stockholder of the Parent (immediately before the asset transfer) in exchange for or with respect to the Parent’s stock, (2) an entity of which the Parent has Control, (3) a Person, that owns, directly or indirectly, fifty percent (50%) or more of the all outstanding voting securities of the Parent, or (4) an entity of which a Person described in this subsection (iii)(B)(3) has Control. For purposes of this subsection (iii), gross fair market value means the value of the assets of the Parent, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets;

provided, however, that a Change in Control will not be deemed to have occurred if such Change in Control results solely from the issuance, in connection with a *bona fide* public offering, financing or series of financings by the Parent, of voting securities of the Parent or any rights to acquire voting securities of the Parent which are convertible into voting securities.

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Further and for the avoidance of doubt, a transaction will not constitute a Change of Control if: (x) its sole purpose is to change the state or jurisdiction of the Parent's incorporation, or (y) its sole purpose is to create a holding company the voting securities of which will be owned in substantially the same proportions by the persons who held the Parent's voting securities immediately before such transaction.

c. **"Good Reason"** means any of the following:

- (i) any unilateral change or series of changes to your employment responsibilities, reporting relationship, or status within the Company or Parent, such that immediately after such a change or series of changes to your responsibilities, reporting relationship, or status, taken as a whole, and taking into account the size and complexity of the business of the Company or Parent at that time, are substantially less than those assigned to you immediately prior to such change or series of changes; or
- (ii) a material reduction in your Base Salary or other compensation as in effect prior to the Change of Control; or
- (iii) the taking of any action by the Company or Parent, or the failure by the Company or Parent to take any action, that would materially adversely affect your participation in, or materially reduce your aggregate benefits under, the total package of long-term incentive, bonus, compensation, retirement savings plan, life insurance, health, accident disability and other similar plans in which you are participating prior to the action by the Company or Parent or the failure by the Company or Parent to take any action; or
- (iv) the unilateral requirement that you relocate to a new location that is both (a) more than 60 kilometers from your previous work location and (b) more than 60 kilometers from your primary residence; it being understood that you shall not be considered to have been relocated for purposes of this subsection (iv) if you are providing services to the Company consistent with Section R of this Agreement or you otherwise expressly consent to a change to Section R; or
- (v) failure or refusal of the Successor Company to offer you terms and conditions of employment, including the provisions of Section M of this Agreement, that are substantially the same as the provisions of this Agreement;

provided that any change or series of changes in reporting relationships alone will not constitute Good Reason.

d. **"Successor Company"** means, in connection with a Change of Control, the surviving or acquiring company or entity.

e. **"Cause"** has the meaning set forth in Appendix A.

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**M. Termination Without Cause or Resignation for Good Reason in Connection With or Following A Change of Control:**

In the event of (i) a termination without cause or (ii) resignation for Good Reason, in either case, occurring within three (3) months prior to a Change of Control and related or connected to that Change of Control or occurring within twelve (12) months after the date of the Change of Control, your employment will end on the date it is terminated without Cause by the Company or Successor Company or the date terminated by you for Good Reason, in which case the Company or Successor Company will provide you with the following, subject to Appendix A and the conditions precedent therein:

- a. payment equal to twelve (12) months' Base Salary, plus one (1) additional month of Base Salary for every year of consecutive service with the Company, including any service with Parent, and Successor Company, up to a combined maximum of eighteen (18) months (the "**COC Payment Period**");
- b. payment of 100% of your then-applicable bonus eligibility calculated on your then-applicable annual Base Salary (i.e. not prorated for the partial year worked), less statutory and other applicable deductions as required;
- c. payment of an amount equal to the contributions to your retirement savings plan the Company would have paid on your behalf during the COC Payment Period;
- d. notwithstanding any provision in the Equity Incentive Plan to the contrary:
  - i. immediate vesting of all unvested stock options and other deferred compensation awards granted to you by the Parent or the Successor Company; and
  - ii. with respect to stock options and other deferred compensation granted pursuant to the Equity Incentive Plan and any subsequent deferred compensation plan, continued exercise rights for the longer of the period stipulated in the applicable plan or grant and six (6) months from the termination of your employment.
- e. payment directly on your behalf or reimbursement to you for the cost of the monthly premiums for you and your eligible dependents to continue your health care benefits pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("**COBRA**") up to the earlier of (I) the end of the Payment Period, or (II) the date you commence full-time employment.

In the case of Good Reason, you must within three (3) months after the occurrence of Good Reason, provide the Company or Successor Company with thirty (30) days' written notice of Good Reason. Where the Good Reason is based in whole or in part on a series of changes, the notice period will commence on the occurrence of the last change in the series. Within thirty (30) days after receipt of written notice of Good Reason, the Company or the Successor Company may correct, reverse, rectify or otherwise resolve the change or series of changes that constitute Good Reason, in which case your employment with the Company or Successor Company will continue.

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Subject to Appendix A, the payments described above, are inclusive of any termination or severance pay owing to you under applicable law, and will be subject to statutory withholdings and other regular payroll deductions. You further agree that you will not be eligible for any additional severance or separation payments under any other Company policy or practice. You will be entitled to the pay, if any, accrued and owing under this Agreement up to the date of termination of your employment. In the event you trigger termination under the Change of Control/Good Reason terms above or are entitled to the termination provisions above as a result of the termination of your employment without Cause, you will not be eligible for any payment pursuant to the termination sections below.

**Termination:**

**N. Resignation.** If for any reason you should wish to leave the Company, you will provide the Company with three (3) months' prior written notice of your intention (the "**Resignation Period**"). You agree that in order to protect the Company's interests, the Company may, in its sole and unfettered discretion, waive the Resignation Period and end your employment immediately by delivering to you a written notice, which shall cease any further pay or compensation obligations of the Company (except for pay, if any, accrued and owing under this Agreement up to the date of termination of your employment). Nothing in this provision is intended to alter the at-will nature of your employment with the Company.

**O. Termination for Cause.** The Company may terminate your employment at any time for Cause. You will not be entitled to receive any further pay or compensation (except for pay, if any, accrued and owing under this Agreement up to the date of termination of your employment), severance pay, notice, payment in lieu of notice, benefits or damages of any kind, and for clarity, without limiting the foregoing, you will not be entitled to any bonus or pro rata bonus payment that has not already been awarded by the Company.

**P. Termination Without Cause.**

(This Section P does not apply to a termination without cause that occurs within three (3) months prior to a Change of Control and in relation or connection to that Change of Control or within six (6) months prior to a Change of Control and in relation or connection to that Change of Control or within twelve (12) months of a Change of Control – such terminations are covered by Section M).

The Company may terminate your employment without Cause at any time upon providing you a severance payment in the amount equal to twelve (12) months plus one (1) additional month for every one (1) year of consecutive service with the Company or Parent, up to a maximum of eighteen (18) months (the "**Payment Period**"), and subject to Appendix A and the conditions precedent therein.

In addition to the severance payment above, in the event of a termination without Cause, the Company will provide you with the following, and, as above, subject to Appendix A and the conditions precedent therein:

- (i) the Company will pay on your behalf or otherwise reimburse you for the cost of the monthly premiums for you and your eligible dependents to continue your health care benefits pursuant under COBRA, as amended up to the earlier of (I) the end of the Payment Period, or (II) the date you commence full-time employment;
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- (ii) the Company will pay you an Average Bonus pro-rated for the period of the partial bonus year you actually worked immediately prior to the termination of your employment, less statutory and other applicable deductions as required. For example, if your last day of work is March 31, you will receive three (3) months of your Average Bonus. If a bonus has not yet been determined for the preceding completed calendar year, the Compensation Committee will first make that determination in the ordinary course using relevant criteria in a manner consistent with prior practice and make its recommendation to the Board so that the Average Bonus can then be determined and paid in accordance with this provision. For clarity, it is expressly agreed that you will not be entitled to any bonus whatsoever for any period of time after your last actual day at work, including during the Payment Period;
- (iii) the Company will pay an amount equal to the contributions to your retirement savings plan it would have paid on your behalf for the Payment Period.
- (iv) notwithstanding any provision in the Plan to the contrary, all options and any other deferred compensation granted to you will continue to vest for a period of three (3) months after the date your employment terminates and all vested stock options and other deferred compensation will be exercisable until the earlier of the original expiry day of the stock options and deferred compensation and the date that is six (6) months after the date your employment terminates.

Any payments, severance, or other benefits hereunder will be subject to applicable withholdings and deductions. You will not be entitled to receive any further pay or compensation except (i) as expressly set out in this Agreement, and (ii) the pay, if any, accrued and owing under this Agreement up to the date of termination of your employment.

On termination of your employment, regardless of the reason for such termination, you shall immediately (and with contemporaneous effect) resign any directorships, offices or other positions that you may hold, if any, in the Company, Parent or any affiliate, unless otherwise agreed in writing by the Company and Parent.

**Q. Work Permit.** You will continue to be required to work in the Parent's Canadian office while fulfilling your on-site presence expectations, as further described in an Employee Secondment Agreement Letter. As such, your employment with the Company is contingent upon your signing and complying with the Employee Secondment Agreement Letter and maintaining your authorization to work in Canada. If you fail to maintain such status at any point after commencing your employment with the Company, that will be considered a frustration of your employment agreement and the Company will then be able to terminate your employment agreement with no severance payment to you. The Company will support your application for any such authorization.

**R. On-Site Expectations.** You will be expected to be on site at Parent's place of business as required to perform your duties and responsibilities. Business travel on behalf of Parent will be considered as time spent on-site at Parent. The requirements for your on-site presence will be reviewed with the Parent on an ongoing basis. In order to support your on-site presence, the Company will pay for your flights to and from Vancouver, BC and your accommodation during your travel to Vancouver, BC.

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**S. FDA Debarment.** As a condition of your employment with the Company, you must certify and reaffirm that you are not under investigation by the FDA for debarment action, have not been debarred under the Generic Drug Enforcement Act of 1992 (21 U.S.C. 301 et seq.), and are not otherwise being investigated, restricted or disqualified from performing services relating to clinical trials by the FDA or any other regulatory authority or professional body in any other jurisdiction. If, during the course of your employment with the Company, you become subject to such investigation or otherwise are restricted or disqualified, you will promptly inform Parent's Legal Department of such event.

**T. Miscellaneous**

**No Implied Entitlement.** Other than as expressly provided herein, you will not be entitled to receive any further pay or compensation, severance pay, notice, payment in lieu of notice, incentives, bonuses, benefits or damages of any kind.

**Continued Effect.** Notwithstanding any changes in the terms and conditions of your employment which may occur in the future, including any changes in position, duties or compensation, the termination provisions in this Agreement will continue to be in effect for the duration of your employment with the Company unless otherwise amended in writing and signed by the Company.

**Authorization to Deduct Debts.** If, on the date you leave employment, you owe the Company any money, you hereby authorize the Company to deduct any such debt from your final pay or any other payment due to you to the extent permitted by applicable law. Any remaining debt will be immediately payable to the Company and you agree to satisfy such debt within fourteen (14) days after any demand for repayment, to the extent permitted by applicable law.

**Dispute Resolution.** IN CONSIDERATION OF YOUR EMPLOYMENT WITH THE COMPANY, ITS PROMISE TO ARBITRATE ALL EMPLOYMENT-RELATED DISPUTES AND YOUR RECEIPT OF THE COMPENSATION AND OTHER BENEFITS PAID TO YOU BY THE COMPANY, AT PRESENT AND IN THE FUTURE, YOU AGREE THAT ANY AND ALL CONTROVERSIES, CLAIMS, OR DISPUTES WITH ANYONE (INCLUDING THE COMPANY AND ANY EMPLOYEE, OFFICER, DIRECTOR, SHAREHOLDER OR BENEFIT PLAN OF THE COMPANY, IN THEIR CAPACITY AS SUCH OR OTHERWISE), ARISING OUT OF, RELATING TO, OR RESULTING FROM YOUR EMPLOYMENT WITH THE COMPANY OR THE TERMINATION OF YOUR EMPLOYMENT WITH THE COMPANY, INCLUDING ANY BREACH OF THIS AGREEMENT, SHALL BE SUBJECT TO BINDING ARBITRATION, AS SET FORTH IN THE CONFIDENTIALITY AGREEMENT.

**Legal Counsel.** You have been advised by the Company to retain independent legal advice with respect to this Employment Agreement.

**Currency.** Except as otherwise specifically indicated, all monetary amounts referenced herein are in U.S. dollars.

**Severability.** If any part, article, section, clause, paragraph or subparagraph of this Agreement is held to be indefinite, invalid, illegal or otherwise voidable or unenforceable for any reason, the entire Agreement will not fail on the account thereof and the validity, legality and enforceability of the remaining provisions will in no way be affected or impaired thereby.

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**Entire Understanding.** We also confirm that this Agreement (including Appendix A), the Equity Incentive Plan and the attached Confidentiality Agreement and Employee Secondment Agreement Letter and related documentation set forth our entire understanding of the terms of your employment with the Company, and cancels and supersedes all previous invitations, proposals, letters, correspondence, negotiations, promises, agreements with the Parent, the Company, or any related entity (including the Prior Agreement), covenants, conditions, representations and warranties with respect to the subject matter of this Agreement. Any modifications to these employment terms must be made in writing and signed by both you and the Company.

**Fresh Consideration.** The Company is hereby providing you with one hundred dollars (\$100) as fresh consideration for you entering into this Employment Agreement. You hereby accept the receipt and sufficiency of this fresh consideration.

**Governing Law.** This Agreement and all matters arising hereunder will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard for conflict of law provisions.

**Protected Activity Not Prohibited.** I understand that nothing in this Agreement shall in any way limit or prohibit me from engaging in any Protected Activity. For purposes of this Agreement, "Protected Activity" means filing a charge or complaint with, or otherwise communicating or cooperating with or participating in any investigation or proceeding that may be conducted by any federal, state or local government agency or commission, including the Securities and Exchange Commission, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, and the National Labor Relations Board ("**Government Agencies**"). I understand that in connection with such Protected Activity, I am permitted to disclose documents or other information as permitted by law, and without giving notice to, or receiving authorization from, the Company or Parent. Notwithstanding, in making any such disclosures or communications, I agree to take all reasonable precautions to prevent any unauthorized use or disclosure of any information that may constitute Company Confidential Information to any parties other than the Government Agencies. I further understand that Protected Activity does not include the disclosure of any Company or Parent attorney-client privileged communications. In addition, I hereby acknowledge that the Company has provided me with notice in compliance with the Defend Trade Secrets Act of 2016 regarding immunity from liability for limited disclosures of trade secrets. The full text of the notice is attached in Appendix B.

If you have any questions or concerns regarding the above, please do not hesitate to contact me.

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To accept this Agreement on the terms set out herein, please sign where indicated below, and return a signed copy of this Agreement along with a signed copy of the Confidentiality Agreement and the Secondment Agreement to me before March 27, 2019.

Yours sincerely,

**XENON PHARMACEUTICALS USA INC.**

/s/ Ian Mortimer  
Ian Mortimer  
President & Treasurer

Attachment(s):

1. Confidentiality Agreement
2. Employee Secondment Agreement Letter

I hereby confirm that I have read, understand and voluntarily accept the terms of this Agreement:

/s/ James Empfield    27/03/2019  
**James Empfield**    **DD/MM/YYYY**

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## APPENDIX A

### ADDITIONAL TERMS TO EXECUTIVE EMPLOYMENT AGREEMENT

Unless otherwise defined below, capitalized terms used herein will have the meanings set forth in the Agreement.

**A. Conditions to Receipt of Annual Bonus.** Your annual bonus must be paid no later than March 15th of the year following the year for which you earn such bonus.

**B. Conditions to Receipt of Severance.**

a. *Release of Claims.* The receipt of any vesting acceleration, severance payments and benefits pursuant to Sections M or P of the Agreement will be subject to you signing and not revoking a separation agreement and release of claims related to your service with the Company (which may include an agreement not to disparage the Company, affirmation of your obligations under the Confidentiality Agreement (as defined above), and other standard terms and conditions) in a form reasonably satisfactory to the Company (the "**Release**") and provided that such Release becomes effective and irrevocable no later than sixty (60) days (or such longer time as may be required by applicable law) following the termination date (such deadline, the "**Release Deadline**"). If the Release does not become effective and irrevocable by the Release Deadline, you will forfeit any rights to severance or benefits under this Agreement. In no event will severance payments or benefits be paid or provided until the Release becomes effective and irrevocable. In the event that the Release Deadline spans two (2) calendar years, then any severance payments or benefits payable under Sections M or P that otherwise constitute Deferred Payments (as defined below) will be paid no earlier than the first day of the second calendar year, subject to any delayed as may be required for Section 409A.

b. *Section 409A*

- (i) Notwithstanding anything to the contrary in this Agreement, no Deferred Payments will be paid or otherwise provided until you have a "separation from service" (within the meaning of Section 409A) from the relevant position or positions. Similarly, no severance payable to you, if any, pursuant to this Agreement that otherwise would be exempt from Section 409A solely pursuant to Treasury Regulation Section 1.409A-1(b)(9) will be payable until you have a "separation from service" (within the meaning of Section 409A).
  - (ii) Notwithstanding anything to the contrary in this Agreement, if you are a "specified employee" within the meaning of Section 409A at the time of your termination of employment (other than due to death), then the Deferred Payments that are payable within the first six (6) months following your separation from service, will, to the extent required to be delayed pursuant to Section 409A(a)(2)(B) of the Code, become payable on the first payroll date that occurs on or after the date six (6) months and one (1) day following the date of your separation from service. All subsequent Deferred Payments, if any, will be payable in accordance with the payment schedule applicable to each payment or benefit. Notwithstanding anything herein to the contrary, if you die following your separation from service, but prior to the six (6) month anniversary of the separation from service, then any payments delayed in accordance with this paragraph will be payable in a lump sum as soon as administratively practicable after the date of your death and all other Deferred Payments will be payable in accordance with the payment schedule applicable to each payment or benefit. In no event will the Company reimburse you for any taxes that may be imposed on you as a result of Section 409A. Each payment and benefit payable under this Agreement is intended to constitute a separate payment for purposes of Section 1.409A-2(b)(2) of the U.S. Treasury Regulations.
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- (iii) Any amount paid under this Agreement that satisfies the requirements of the "short-term deferral" rule set forth in Section 1.409A-1(b)(4) of the U.S. Treasury Regulations will not constitute Deferred Payments for purposes of this Agreement.
  - (iv) Any amount paid under this Agreement that qualifies as a payment made as a result of an involuntary separation from service pursuant to Section 1.409A-1(b)(9)(iii) of the U.S. Treasury Regulations that does not exceed the Section 409A Limit (as defined below) will not constitute Deferred Payments for purposes of this Agreement.
  - (v) With respect to any expense reimbursements which are not otherwise excludible from your gross taxable income, to the extent required to comply with the provisions of Section 409A, no reimbursement of expenses incurred by you during any taxable year shall be made after the last day of the following taxable year, the right to reimbursement of any such expenses shall not be subject to liquidation or exchange for another benefit, and the amount of expenses eligible for reimbursement during any taxable year may not affect the expenses eligible for reimbursement in any other taxable year.
  - (vi) The provisions of this Agreement and the payments and benefits hereunder are intended to be exempt from or comply with the requirements of Section 409A so that none of the severance or other payments and benefits to be provided hereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities herein will be interpreted to be so exempt or so comply. The Company and you agree to work together in good faith to consider amendments to this Agreement and to take such reasonable actions which are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition prior to actual payment to you under Section 409A.
  - (vii) Definitions:
    - (A) "**Deferred Payment**" means any severance pay or benefits to be paid or provided to you (or your estate or beneficiaries) pursuant to this Agreement and any other severance payments or separation benefits to be paid or provided to you (or your estate or beneficiaries), that in each case, when considered together, are considered deferred compensation under Section 409A.
    - (B) "**Section 409A**" means Section 409A of the U.S. Internal Revenue Code of 1986 (the "**Code**") and the final regulations and any guidance thereunder and any applicable state law equivalent, as each may be amended or promulgated from time to time.
    - (C) "**Section 409A Limit**" means two (2) times the lesser of: (i) your annualized compensation based upon the annual rate of pay paid to you during your taxable year preceding the taxable year of your separation from service as determined under U.S. Treasury Regulation Section 1.409A-1(b)(9)(iii)(A)(1) and any U.S. Internal Revenue Service guidance issued with respect thereto; or (ii) the maximum amount that may be taken into account under a qualified plan pursuant to Section 401(a)(17) of the Code for the year in which your separation from service occurred.
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**C.** “Cause” shall mean: (i) your continued failure to substantially perform the material duties and obligations under this Agreement (for reasons other than death or disability), which failure, if curable within the discretion of the Company, is not cured to the reasonable satisfaction of the Company within thirty (30) days after receipt of written notice from the Company of such failure; (ii) your failure or refusal to comply with the policies, standards and regulations established by the Company from time to time which failure, if curable in the discretion of the Company, is not cured to the reasonable satisfaction of the Company within thirty (30) days after receipt of written notice of such failure from the Company; (iii) any act of personal dishonesty, fraud, embezzlement, misrepresentation, or other unlawful act committed by you that benefits you at the expense of the Company; (iv) your violation of a U.S. or Canadian federal, provincial or state law or regulation applicable to the Company's business; (v) your violation of, or a plea of nolo contendere or guilty to, a felony under the laws of the United States or any state or Canada or any province; (vi) your material breach of the terms of this Agreement or the Confidentiality Agreement; or (vii) the Company's severe financial distress, whereby the Company is in the process of winding down its business and your employment is terminated in connection with such winding down.

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## Schedule A

### Duties and Responsibilities

Your duties and responsibilities in this position will include those listed below:

1. Leading the growth of Parent's drug discovery and development pipeline from identified targets to the pre-clinical development stage.
  2. Providing direction and input on pre-clinical discovery activities in a manner that aligns with Parent's focus on rare diseases.
  3. Managing lead optimization activities.
  4. Evaluating and selecting lead and development candidates.
  5. Designing the Parent's internal pre-clinical discovery stage programs and research protocols, and evaluation of program progression.
  6. Developing and managing pre-clinical discovery R&D budgets.
  7. Participating in the initial recruitment, development and retention of key human resources within the preclinical discovery R&D group. Also responsible for evaluating external R&D providers, including CROs and vendors.
  8. Working with partners and potential partners to develop partnered research plans and responsibilities.
  9. Monitoring and reporting internally on partnered R&D activities and milestone progression.
  10. Travel for meetings, conferences and other applicable business
  11. Other duties as required from time to time.
  12. Strictly adhere to all Company and Parent corporate policies, particularly those concerning confidentiality, intellectual property, and safety.
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**SCHEDULE B**

**Disclosure of Volunteer, Board and Other External Commitments**

Position

Organization

Length of Appointment/ Engagement

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## APPENDIX B

### Section 7 of The Defend Trade Secrets Act of 2016

“ . . . An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that—(A) is made—(i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. . . . An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual—(A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.”



KPMG LLP  
PO Box 10426 777 Dunsmuir Street  
Vancouver BC V7Y 1K3  
Telephone (604) 691-3000  
Fax (604) 691-3031

**Exhibit 23.1**

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors  
Xenon Pharmaceuticals Inc.

We consent to the incorporation by reference in the registration statements (Nos. 333-199860, 333-202765, 333-210050, 333-216543, 333-223497, 333-230103 and 333-233758) on Form S-8 and (No. 333-233056) on Form S-3 of Xenon Pharmaceuticals Inc. of our reports dated March 9, 2020, with respect to the consolidated balance sheets of Xenon Pharmaceuticals Inc. as of December 31, 2019 and 2018, and the related consolidated statements of operations and comprehensive loss, shareholders' equity, and cash flows for each of the years in the two-year period ended December 31, 2019, and the related notes (collectively, the "consolidated financial statements") and the effectiveness of internal controls over financial reporting, both of which reports appear in the December 31, 2019 annual report on Form 10-K of Xenon Pharmaceuticals Inc.

Our report on the consolidated financial statements refers to changes in accounting policies for leases in 2019 due to the adoption of ASU 2016-02, *Leases (Topic 842)*.

/s/ KPMG LLP  
Chartered Professional Accountants

March 9, 2020  
Vancouver, Canada

## CERTIFICATIONS

I, Simon Pimstone, certify that:

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

Date: March 9, 2020

By: /s/ Simon Pimstone  
Simon Pimstone  
Chief Executive Officer  
(Principal Executive Officer)

## CERTIFICATIONS

I, Ian Mortimer, certify that:

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

Date: March 9, 2020

By: /s/ Ian Mortimer

Ian Mortimer  
President & Chief Financial Officer  
(Principal Financial and Accounting Officer)

**XENON PHARMACEUTICALS INC.  
CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Xenon Pharmaceuticals Inc. (the "Company") on Form 10-K for the year ended December 31, 2019, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Simon Pimstone, Chief Executive Officer (Principal Executive Officer) of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 9, 2020

By: /s/ Simon Pimstone  
Simon Pimstone  
Chief Executive Officer  
(Principal Executive Officer)

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

This certification accompanies the Report to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Xenon Pharmaceuticals Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Report), irrespective of any general incorporation language contained in such filing.

**XENON PHARMACEUTICALS INC.  
CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Xenon Pharmaceuticals Inc. (the "Company") on Form 10-K for the year ended December 31, 2019, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Ian Mortimer, President & Chief Financial Officer (Principal Financial and Accounting Officer) of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 9, 2020

By: /s/ Ian Mortimer

Ian Mortimer

President and Chief Financial Officer

(Principal Financial and Accounting Officer)

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

This certification accompanies the Report to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Xenon Pharmaceuticals Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Report), irrespective of any general incorporation language contained in such filing.