

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-K**

**Annual report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.**  
For the fiscal year ended December 31, 2019.

**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  
001-35342

**NEWLINK GENETICS CORPORATION**

(Exact name of Registrant as specified in Its Charter)

Delaware

(State or other jurisdiction of incorporation or organization)

42-1491350

(I.R.S. Employer Identification No.)

2503 South Loop Drive  
Ames, Iowa 50010  
(515) 296-5555

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

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

Title of Each Class	Trading Symbol	Name of Each Exchange on Which Registered
Common Stock, par value \$0.01	NLNK	The Nasdaq Stock Market
<b>Securities registered pursuant to Section 12(g) of the Act:</b>		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 whether 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 and post such files). Yes  No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 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 common stock held by non-affiliates of the registrant based on the closing sale price of the registrant's common stock on June 28, 2019, as reported by the Nasdaq Global Market, was \$42,833,809. Shares of the registrant's common stock beneficially owned by each executive officer and director of the registrant and by each person known by the registrant to beneficially own 10% or more of its outstanding common stock have been excluded, in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily conclusive.

As of February 25, 2020, there were 37,328,425 shares of the registrant's Common Stock, par value \$0.01 per share, outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

Part III incorporates information by reference to our definitive Proxy Statement for our Annual Meeting of Stockholders.



## NewLink Genetics Corporation

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## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act), and the Private Securities Litigation Reform Act of 1995, and such statements are subject to the “safe harbor” created by those sections. Forward-looking statements involve substantial risks and uncertainties. All statements, other than statements of historical facts, contained in this Annual Report on Form 10-K, including statements regarding our strategy, future operations, future financial position, future revenues, projected costs, prospects, plans and objectives of management, are forward-looking statements. The words “anticipate,” “believe,” “estimate,” “expect,” “intend,” “may,” “plan,” “predict,” “project,” “target,” “potential,” “will,” “would,” “could,” “should,” “continue,” “contemplate,” or the negative of these terms or other similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words.

The forward-looking statements in this Annual Report on Form 10-K include, among other things, statements regarding the following: the expected benefits, completion and timing of the proposed Merger (as defined below) with Lumos (as defined below); the expected solicitation of and the actual stockholders’ approval of issuance of NewLink’s common stock pursuant to the Merger Agreement (as defined below) and reverse stock split; the expected management, strategy and development focus of the combined company post consummation of the proposed Merger; the expected capitalization, resources, ownership structure and operations of the combined company post consummation of the proposed Merger; our expectations regarding the sufficiency of the combined company’s resources to fund the advancement of any development program or the completion of any clinical trial; the development plan for LUM-201; the development plan for our existing pipeline and potential partnership and out-licensing opportunities; plans related to moving additional indications into clinical development; our ongoing and any future preclinical studies and clinical trials; our plan to monetize our interest in the priority review voucher and the expected economic benefit thereof; the timing of release of the results of interim analyses or other data from ongoing clinical studies; the timing for completion of enrollment and outcomes of any clinical studies; the timing of and our ability to obtain and maintain regulatory approvals for our product candidates; the clinical utility of our product candidates; our plans to leverage our existing technologies to discover and develop additional product candidates; our ability to quickly and efficiently identify and develop product candidates; our intellectual property position; the potential benefits of strategic collaboration agreements and our ability to enter into strategic arrangements; our estimates regarding expenses, future revenues, capital requirements and needs for additional financing; our future financial performance; plans to develop, commercialize, market and manufacture our product candidates; any other statements other than statements of historical fact; and other risks and uncertainties, including those listed under the caption “Risk Factors.”

The forward-looking statements in this Annual Report on Form 10-K represent our views as of the date of this Annual Report on Form 10-K. Although we believe that the expectations reflected in the forward-looking statements contained herein are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. These statements involve known and unknown risks and uncertainties that may cause our, or our industry’s results, levels of activity, performance or achievements to be materially different from those expressed or implied by the forward-looking statements. Factors that may cause or contribute to such differences include, among other things, those discussed under the captions “Business,” “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations.” Forward-looking statements not specifically described above also may be found in these and other sections of this report.

We anticipate that subsequent events and developments will cause our views to change. However, while we may elect to update these forward-looking statements at some point in the future, we have no current intention of doing so, even if new information becomes available, except to the extent required by applicable law. You should, therefore, not rely on these forward-looking statements as representing our views as of any date subsequent to the date of this Annual Report on Form 10-K.

You should read this Annual Report on Form 10-K and the documents that we reference in this Annual Report on Form 10-K completely and with the understanding that our actual future results may be materially different from what we expect. You are also advised to consult any further disclosures we make on related subjects in our Quarterly Reports, our Proxy Statements, and our Current Reports.

## PART I

### Item 1. BUSINESS

#### Overview

NewLink Genetics Corporation (the Company, NewLink, we, our or us) is a clinical-stage company that has historically focused on developing novel immunotherapeutic products for the treatment of patients with cancer. Our leading small-molecule product candidates currently in clinical development target the indoleamine-2, 3-dioxygenase (IDO) pathway, which is one of the key pathways for cancer immune escape. These product candidates, indoximod and NLG802 (a prodrug of indoximod), are IDO pathway inhibitors with mechanisms of action that center around breaking the immune system's tolerance to cancer. We also have an additional small molecule product candidate, NLG207 (formerly CRLX101), which is a nanoparticle-drug conjugate (NDC) consisting of a cyclodextrin-based polymer backbone linked to camptothecin, a topoisomerase 1 inhibitor, which has been assigned to Ellipses Pharma Limited (Ellipses), effective December 17, 2019.

We had a net loss of \$43.0 million for the year ended December 31, 2019.

Founded in 1999, our principal executive office is located Ames, Iowa, with an additional office located in Wayne, Pennsylvania.

#### Lumos Merger

On September 30, 2019, we entered into an Agreement and Plan of Merger and Reorganization (as amended, the Merger Agreement) with Cyclone Merger Sub, Inc., a wholly-owned subsidiary of NewLink (the Merger Sub) and Lumos Pharma, Inc., a privately-held Delaware corporation (Lumos), pursuant to which, among other things, subject to the satisfaction or waiver of the conditions set forth in the Merger Agreement, Merger Sub will merge with and into Lumos, with Lumos surviving as our wholly-owned subsidiary (the Merger). Following the Merger, we will change our name to "Lumos Pharma, Inc." and Lumos will change its name to a name mutually agreed upon by us and Lumos.

If our stockholders approve the Merger, at the effective time of the Merger (the Effective Time), each share of Lumos capital stock outstanding immediately prior to the Effective Time (excluding shares of Lumos capital stock held as treasury stock or held or owned by Lumos or Merger Sub prior to the Effective Time and shares held by Lumos stockholders who have exercised and perfected appraisal rights in accordance with Delaware law) shall be automatically converted solely into the right to receive a number of shares of our common stock equal to the amount determined pursuant to a charter amendment to Lumos' certificate of incorporation that will be filed prior to the Effective Time, at exchange ratios applicable to each type of Lumos capital stock. Pursuant to such conversion, immediately following the Merger, former Lumos stockholders will own approximately 50% of the aggregate number of shares of our common stock issued and outstanding following the consummation of the Merger (the Post-Closing Shares), and our stockholders as of immediately prior to the Merger will own approximately 50% of the aggregate number of Post-Closing Shares. Outstanding options to purchase Lumos common stock will be assumed by us and converted into options to purchase a number of shares of our common stock at the exchange ratio applicable to exchanging shares of Lumos common stock for our common stock.

The Merger Agreement includes customary representations, warranties and covenants made by the Company and Lumos, including covenants relating to the Company's and Lumos' conduct of their respective businesses between the date of signing the Merger Agreement and the closing of the Merger. Consummation of the Merger is subject to certain closing conditions, including, among other things, approval by the stockholders of the Company and Lumos. Lumos stockholders approved the Merger in September 2019. The Merger Agreement contains certain termination rights for both NewLink and Lumos, and further provides that, upon termination of the Merger Agreement under specified circumstances, NewLink or Lumos, as applicable, may be required to pay the other party a termination fee of \$2.0 million.

The Merger Agreement contemplates that we will also seek approval from our stockholders to effect a reverse stock split with the split ratio to be mutually agreed to by the Company and Lumos immediately prior to the Effective Time. The Merger is expected to close in the first quarter of 2020. The special meeting of stockholders will be held on March 17, 2020.

#### Planned Future Operations

We intend to continue to maximize stockholder interests with a goal of returning value to our stockholders. After the consummation of the Merger, the combined company expects to focus its efforts on the development of Lumos' sole product candidate, LUM-201 (ibutamoren), a potential oral therapy for pediatric growth hormone deficiency (PGHD) and other rare endocrine disorders. Our management does not intend to pursue further internal development of our existing pipeline upon

consummation of the Merger, but will continue to evaluate our pipeline in light of the results of the diffuse intrinsic pontine glioma (DIPG) cohort of our Phase 1b clinical trial for indoximod and may seek to identify potential partnerships and out-licensing opportunities.

If we do not receive stockholder approval for the Merger, the Merger will not occur and Lumos will not become our wholly-owned subsidiary. Should the proposed Merger not be approved by stockholders or not go forward for some other reason, the Company intends to continue to evaluate opportunities for strategic transactions. In parallel, we will continue to seek out-licensing, partnership, or other approaches to building value with our current pipeline.

## **IDO Pathway Inhibitors**

In cancer, the IDO pathway regulates immune response by suppressing T-cell activation, which enables cancer to avoid immune response. IDO is overexpressed in many cancers, both within tumor cells as a direct defense against T-cell attack, and also within antigen presenting cells in tumor-draining lymph nodes, thereby promoting peripheral tolerance to tumor associated antigens (TAAs). When hijacked by developing cancers in this manner, the IDO pathway may facilitate the survival, growth, invasion and metastasis of malignant cells whose expression of TAAs might otherwise be recognized and attacked by the immune system.

Currently, we have a small molecule portfolio primarily focused on the IDO pathway. Our small-molecule IDO pathway inhibitor product candidates that have previously been advanced into the clinic include indoximod and NLG802. Our product candidates are designed to counteract the above described immunosuppressive effects of the IDO pathway in cancer. Preclinical evidence support the premise that indoximod stimulates the activation of antitumor T-cells through activation of mammalian target of rapamycin (mTOR) and modulation of signaling through the aryl hydrocarbon receptor (AhR).

To date, our IDO focused small molecules have been well tolerated in clinical trials. They are orally bioavailable and we believe they offer the potential to be synergistic with other cancer therapies such as radiation, chemotherapy, vaccination and immunotherapies involving other checkpoint inhibitors such as anti-PD-1, anti-programmed cell death ligand-1 (PD-L1), or anti-cytotoxic T-lymphocyte antigen 4 (CTLA4). Clinical data suggest an increase in clinical activity without adding significant toxicity

### ***Indoximod***

Indoximod, our first IDO pathway inhibitor, has been tested in multiple clinical settings including in combination with other cancer therapeutics for patients with DIPG. More than 900 patients have been treated with indoximod to date and it has generally been well-tolerated, including in combination with PD-1 checkpoint inhibitors, various chemotherapy agents, radiation, and a cancer vaccine.

A tablet formulation of indoximod hydrochloride has been developed for adult patients and a sprinkle formulation is being developed for pediatric indications. Both of these new tablet formulations of indoximod could be used in future clinical trials.

### ***NLG802***

NLG802 is a prodrug of indoximod. NLG802 is intended to increase bioavailability and exposure to indoximod above levels currently achievable by direct oral administration of indoximod. We filed an Investigational New Drug (IND) application with the U.S. Food and Drug Administration (the FDA), in the first quarter of 2017 and the first patient was dosed with NLG802 in a Phase 1 clinical trial in July 2017. The purpose of this Phase 1 trial was to assess preliminary safety and to determine the recommended dose for subsequent Phase 2 evaluations.

In May 2019, we presented updated results for the Phase 1 dose escalation trial for NLG802 at the Immuno-Oncology 2019 World Congress. Pharmacokinetics (PK) results were also reported from this study. After continuous twice-daily dosing with NLG802 at all levels, significantly higher PK exposure as compared to indoximod was observed. At 1452 mg twice daily, the highest dose administered, NLG802 produced a 6-fold increase in C<sub>max</sub> and a 4.7-fold increase in AUC compared with molar equivalent indoximod dosing.

The treatment regimen was well tolerated with no NLG802-related serious adverse events reported. The recommended Phase 2 dose was established at 1452 mg BID based on achieving preclinical exposure levels required for pharmacodynamic effects of indoximod.

Two U.S. patents covering both the salt and prodrug formulations of indoximod were issued in the United States on August 15, 2017 and February 19, 2019, respectively, providing exclusivity until at least 2036. We are currently pursuing international patent coverage for these formulations in some countries.

### **NLG919**

NLG919, a direct IDO enzymatic inhibitor, was previously in clinical development as part of our collaboration with Genentech, Inc. (Genentech). In October 2014, we entered into an exclusive worldwide license and collaboration agreement with Genentech (the Genentech Agreement). The Genentech Agreement provided for the development and commercialization of NLG919. On December 6, 2017, the Genentech Agreement with respect to NLG919 was terminated. As part of the partial termination, worldwide rights to NLG919 reverted to us and Genentech granted us a license to certain of Genentech's intellectual property to develop and commercialize NLG919. We continue to explore the potential for further development and licensing opportunities but do not have an active program for the drug product candidate as of December 31, 2019.

### **Additional Product Candidates**

#### **NLG207**

NLG207 is a NDC consisting of a cyclodextrin-based polymer backbone linked to camptothecin, a topoisomerase-1 inhibitor. Because the vasculature in tumors is more permeable than normal tissue, we believe NDCs have the potential to enhance drug delivery to tumors by enabling gradual payload release inside cancer cells to augment antitumor activity while reducing off-target toxicity. NLG207 has been studied in more than 400 patients as monotherapy or in combination with other anticancer agents for patients with solid tumors.

A Phase 2 trial evaluating NLG207 plus paclitaxel for patients with recurrent ovarian, fallopian tube or primary peritoneal cancer was completed in collaboration with the Gynecological Oncology Group and the results of the trial were presented at the annual meeting for the American Association for Cancer Research on April 2, 2019.

We assigned our rights to NLG207 to Ellipses, effective December 17, 2019.

#### **Ebola Vaccine**

In November 2014, we entered into an exclusive, worldwide license and collaboration agreement (the Merck Agreement) with Merck, Sharpe and Dohme Corp. (Merck) to develop and potentially commercialize our rVSVΔG-ZEBOV GP vaccine product candidate and other aspects of our vaccine technology. The rVSVΔG-ZEBOV GP vaccine product candidate was originally developed by the Public Health Agency of Canada (PHAC) and is designed to utilize the rVSV vector to induce immunity against Ebola virus when replacing the VSV glycoprotein with corresponding glycoproteins from filoviruses. Under the Merck Agreement, we received an upfront payment of \$30.0 million in October 2014, and in February 2015 we received a milestone payment of \$20.0 million.

In addition to milestone payments from Merck, we were awarded contracts for development of the rVSVΔG-ZEBOV GP from the U.S. BioMedical Advanced Research & Development Authority (BARDA) and the Defense Threat Reduction Agency (DTRA) totaling \$52.1 million during 2016 and \$67.0 million during 2014 and 2015. Funds of \$2.1 million were de-obligated from the DTRA grant awards in 2017. We have received total awards of \$118.8 million. On April 26, 2018 we entered into an agreement with Merck, DTRA and BARDA to transfer the government grants from BARDA and DTRA to Merck. The transfer was completed in June 2018 and Merck replaced us as the prime contractor on all such grants.

On December 20, 2019, Merck announced that the FDA approved its application for ERVEBO® (Ebola Zaire Vaccine, Live) for the prevention of disease caused by Zaire Ebola virus in individuals 18 years of age and older. On January 3, 2020, Merck notified us that they had been issued a priority review voucher (PRV). Under the terms of the Merck Agreement, on February 4, 2020, Merck assigned all of its rights and interests in connection with the PRV to NewLink, and NewLink is entitled to 60% of the value of the PRV obtained through sale, transfer or other disposition of the PRV. We also have the potential to earn royalties on sales of the vaccine in certain countries, if the vaccine is successfully commercialized by Merck. However, we believe that the market for the vaccine will be limited primarily to areas in the developing world that are excluded from royalty payment or where the vaccine is donated or sold at low or no margin and therefore we do not expect to receive material royalty payments from Merck in the foreseeable future.

## **Cancer Market Overview**

Cancer is the second-leading cause of death in the United States; the American Cancer Society estimated that more than 606,520 deaths will occur in 2020 and almost 1.8 million new cancer cases are expected to be diagnosed in 2020. Despite a number of advances in the diagnosis and treatment of cancer over the past decade, overall five-year survival rates from all cancer types is 69% for the period spanning 2009-2015 according to the National Cancer Institute.

Cancer is characterized by abnormal cells that grow and proliferate, forming masses called tumors. Under certain circumstances, these proliferating cells can metastasize, or spread, throughout the body and produce deposits of tumor cells called metastases. As the tumors grow, they may cause tissue and organ failure and, ultimately, death. To be effective, cancer therapies must eliminate or control the growth of the cancer.

The specialized cells of the immune system recognize specific chemical structures called antigens. Generally, foreign antigens trigger an immune response that results in the removal of disease-causing agents from the body. Cancer cells, however, frequently display antigens that are also found on normal cells. The immune system may not be able to distinguish between tumors and normal cells and therefore may be unable to mount a strong anti-cancer response. Additionally, tumors often express abnormal proteins that could be recognized by the immune system. However, tumors also have various immune-suppressive defense mechanisms that may prevent the immune system from fully activating and recognizing these abnormal antigens.

Current therapies, such as surgery, radiation, hormone treatments and chemotherapy, do not directly address this immune-evasive characteristic of cancer and may not have the desired therapeutic effect. Active immunotherapies stimulate the immune system, the body's natural mechanism for fighting disease, and may overcome some of the limitations of current standard-of-care cancer therapies.

## **Grants and Contracts with the United States Government**

Other than the upfront payments received in 2014 from Genentech and Merck, grants and contracts with the U.S. Government have accounted for substantially all of our revenue in prior years. As the prime contractor for BARDA, from December 2014 through when contracts were transferred to Merck in June 2018, we were awarded a total of approximately \$103.0 million in funding and approximately \$51.0 million of additional contract options to support the manufacturing and development activities related to the Ebola vaccine. Activities included clinical development through a 330-person Phase 1b clinical trial, the scale-up of the manufacturing process related to the Ebola vaccine, and the development of the Ebola vaccine, designated V920 (ERVEBO®), designed to induce immunity against the Ebola Zaire virus. The funding supported manufacturing facility readiness, manufacturing process qualification activities, and additional clinical trials to support regulatory approval of the V920 (ERVEBO®) vaccine which was led by our partner, Merck.

We have also received funding from the United States Department of Defense (DOD) to support the development of contract manufacturing for the Ebola vaccine for clinical trials. From December 2014 through when contracts were transferred to Merck in June 2018, we have been awarded funds of approximately \$15.6 million to support various development activities of the Ebola vaccine.

## **Manufacturing**

We contract with manufacturing organizations to develop and manufacture indoximod and NLG802. We believe that many suppliers would be available for the production of these product candidates, if required. We have no plans to build our own manufacturing facility to support any of these product candidates.

If we were to need additional supply of NLG919, we would be responsible for the manufacturing and would seek to contract with manufacturing organizations to develop and manufacture NLG919. We have no plans to build our own manufacturing facility to support this product candidate.

Ellipses has assumed responsibility for manufacturing the NLG207 product candidate in accordance with the terms of our asset purchase agreement.

Merck has assumed responsibility for manufacturing the Ebola vaccine in accordance with the Merck Agreement.

## **Sales and Marketing**

We currently own exclusive worldwide commercial rights to all our product candidates other than the Ebola vaccine and NLG207. In the future, we may pursue collaborations or co-promotion arrangements with pharmaceutical and biotechnology companies to complement these efforts or for particular indications or in specific territories.

## **Competition**

The biopharmaceutical industry is highly competitive. Given the significant unmet patient need for new therapies, oncology is an area of focus for many public and private biopharmaceutical companies, public and private universities and research organizations actively engaged in the discovery and research and development of products for cancer. As a result, there are and will likely continue to be extensive research and substantial financial resources invested in the discovery and development of new oncology products. In addition, there are multiple multinational pharmaceutical companies and large biotechnology companies currently marketing or pursuing the development of products or product candidates targeting the same cancer indications as our product candidates.

Many of our competitors, either alone or with their strategic collaborators, have substantially greater financial, technical and human resources than we do and significantly greater experience in the discovery and development of drugs, obtaining FDA and other regulatory approvals, and the commercialization of those products. Accordingly, our competitors may be more successful in obtaining approval for drugs and achieving widespread market acceptance. Our competitors' drugs may be more effective, or more effectively marketed and sold, than any drug we may commercialize and may render our product candidates obsolete or non-competitive before we can recover the expenses of developing and commercializing any of our product candidates. We anticipate that we will face intense and increasing competition as new drugs enter the market and advanced technologies become available.

We also face competition from pharmaceutical and biotechnology companies, academic institutions, government agencies and private research organizations in recruiting and retaining highly qualified scientific personnel and consultants and developing and acquiring technologies, obtaining patent protection, and securing sufficient capital resources for the often lengthy period between technological conception and commercial sales. Moreover, technology controlled by third parties that may be advantageous to our business may be acquired or licensed by our competitors, thereby preventing us from obtaining technology on commercially reasonable terms, if at all. We will also compete for the services of third parties that may have already developed or acquired internal biotechnology capabilities or made commercial arrangements with other biopharmaceutical companies to target the diseases on which we have focused both inside and outside of the United States.

### ***Immunotherapy Products for Cancer***

The cancer immunotherapy landscape is broad but still in the early stages of development as compared to more established approaches like cytotoxic chemotherapy. Multiple immunotherapy products to treat cancer been approved in recent years. Multiple drugs classified as checkpoint inhibitors have been approved since 2011 targeting either CTLA-4, PD-1 or PD-L1 via antibody blockade. Additionally, there have been regulatory approvals for other immunotherapies including in the classes of CAR-T and oncolytic virus. The indications for which these agents have been approved include some indications that may be promising avenues for clinical development of our product candidates.

## **Strategic Collaborations**

### ***Genentech Agreement***

In October 2014, we entered into the Genentech Agreement for the development and commercialization of NLG919, our clinical stage IDO pathway inhibitor, and a research collaboration for the discovery of next generation IDO//tryptophan-2,3-dioxygenase (TDO) inhibitors to be developed and commercialized under the Genentech Agreement. Under the terms of the Genentech Agreement, we received an upfront non-refundable payment of \$150.0 million in 2014 and funding for our participation in the research collaboration, which ended in November 2016.

The agreement was terminated in part on December 6, 2017 and the rights to NLG919 reverted back to us. As part of the partial termination, Genentech granted to us an exclusive license to certain intellectual property of Genentech, to develop and commercialize NLG919, and we are obligated to pay to Genentech a royalty on future net sales of NLG919 in the low single digits. We continue to explore the potential for further development and licensing opportunities but do not have an active program for the drug product candidate as of December 31, 2019.

Under the Genentech Agreement, we conducted a two-year pre-clinical research program with Genentech to discover novel next generation IDO/TDO inhibitors. The research program ended in November 2016, and we received notice on May 9, 2018 that Genentech would not continue the collaboration with respect to next generation IDO/TDO inhibitors identified through the research program. The Genentech Agreement terminated in its entirety on November 6, 2018.

### ***Merck Agreement***

In November 2014, we entered into the Merck Agreement to research, develop and potentially commercialize our Ebola vaccine and certain other aspects of our vaccine technology. The Ebola vaccine was originally developed by PHAC. Under the Merck Agreement, we received an upfront payment of \$30.0 million in 2014 and a milestone payment of \$20.0 million in 2015.

Under the terms of the Merck Agreement, Merck was granted the exclusive rights to the Ebola vaccine. The Ebola vaccine is under a licensing arrangement with BioProtection Systems Corporation (BPS) our wholly owned subsidiary and a licensee of PHAC. Under these license arrangements, PHAC retains non-commercial rights pertaining to the vaccine. The Merck Agreement, as amended on December 5, 2017, absolves BPS from any future obligation to negotiate or amend the terms of the PHAC license, converts the scope of Merck's sublicense under PHAC's intellectual property rights to be non-exclusive in the Ebola Sudan field of use, and requires Merck to reimburse us in certain circumstances where we may be obligated to pay royalties to PHAC as a result of Merck's product sales but Merck would not otherwise be obligated to pay a royalty to us.

On April 26, 2018 we entered into an agreement with Merck, DTRA and BARDA to transfer the government grants from BARDA and DTRA to Merck. The transfer was completed in June 2018 and Merck has replaced us as the prime contractor on all such grants. On December 20, 2019, Merck announced that the FDA has approved its application for ERVEBO® (Ebola Zaire Vaccine, Live) for the prevention of disease caused by Zaire ebola virus in individuals 18 years of age and older. On January 3, 2020, Merck notified us that a PRV was issued to Merck. Under the terms of the Merck Agreement, on February 4, 2020, Merck assigned all of its rights and interests in connection with the PRV to NewLink. We are entitled to 60% of the value of the PRV obtained through sale, transfer or other disposition of the PRV. We also have the potential to earn royalties on sales of the vaccine in certain countries, if the vaccine is successfully commercialized by Merck. However, we believe that the market for the vaccine will be limited primarily to areas in the developing world that are excluded from royalty payment or where the vaccine is donated or sold at low or no margin and therefore we do not expect to receive material royalty payments from Merck in the foreseeable future.

Unless earlier terminated, the Merck Agreement will continue in effect for as long as Merck has royalty payment obligations to us. Merck may terminate the Merck Agreement for convenience upon a specified period of notice or for certain safety reasons with immediate effect. In the event of Merck's uncured material breach of its obligations under the Merck Agreement with respect to a particular product, we may terminate the Merck Agreement with respect to that product. We may also terminate the Merck Agreement with respect to certain products in the event Merck pursues an alternate product under certain circumstances. Each party may terminate the Merck Agreement for the other party's bankruptcy or insolvency.

### ***Ellipses Pharma Limited Agreement***

On December 17, 2019, our fully owned subsidiary Bluelink Pharmaceuticals, Inc. (Bluelink) and NewLink entered into an asset purchase agreement (the Ellipses Agreement) with Ellipses, pursuant to which we assigned all rights to NLG207 owned by us to Ellipses, transferred existing stock of NLG207 to Ellipses and granted Ellipses a sublicense under specified in-licensed intellectual property rights to research, develop and commercialize NLG207 worldwide.

Under the terms of the Ellipses Agreement, NewLink and its affiliates are prohibited from developing or commercializing any specifically defined competing product and Ellipses is obligated use commercially reasonable efforts to develop NLG207 in specified major market countries.

In consideration of the transfer of existing stock and related materials of NLG207, Ellipses paid \$300,000 on signing of the Ellipses Agreement. Additionally, Ellipses is obligated to pay Bluelink a percentage in the low double digits of all net receipts received by Ellipses from transferring, sublicensing or assigning its rights under the assigned assets or products. In the event Ellipses commercializes the product other than through licensing, then Ellipses shall pay Bluelink a percentage in the mid-single digits of all net sales from such commercialization. In each case, the net revenue payments or net sales payments, as applicable, will be payable until the later of the expiration of the last patent assigned or sublicensed to Ellipses in the particular country and 10 years from the first commercial sale of the product, with a step-down in the applicable percentage payable upon expiration of the last patent for the remainder of the applicable payment term.

The Ellipses Agreement will remain in effect on a product-by-product and country-by-country basis until the expiration of the last net receipts payment term. Ellipses has the right to terminate the Ellipses Agreement at will, for the insolvency or bankruptcy of Bluelink or NewLink or for Bluelink's or NewLink's breach of specified obligations. Bluelink has the right to terminate the Ellipses Agreement if Ellipses breaches specified payment obligations, or if Ellipses has not achieved specified diligence milestones by their specified deadlines. Upon any termination by Bluelink, all assigned assets will be transferred back to NewLink and all licenses will terminate. Upon termination by Ellipses at will, all licenses will terminate and Ellipses will grant Bluelink a license under all intellectual property rights generated by Ellipses, subject to agreement on commercially reasonable financial consideration.

## Intellectual Property

We believe that patent protection and trade secret protection are important to our business and that our future success will depend, in part, on our ability to maintain our technology licenses, maintain trade secret protection, obtain and maintain patents and operate without infringing the proprietary rights of others both in the United States and abroad. We believe that obtaining identical patents and protection periods for a given technology throughout all markets of the world will be difficult because of differences in patent laws. In addition, the protection provided by non-U.S. patents, if any, may be weaker than that provided by U.S. patents. We have established and continue to build proprietary positions for our IDO pathway inhibitor technology in the United States and abroad. As of December 31, 2019, our patent portfolio included ten patent families relating to our IDO pathway inhibitor technology and four patent families relating to NLG207.

Our IDO pathway inhibitor technology patent portfolio contains several key U.S. patent families that protect indoximod, NLG802, and NLG919. A series of patents covering indoximod were exclusively licensed from Augusta University Research Institute, formerly known as Georgia Regents Research Institute, Georgia Health Sciences University Research Institute, Inc. and the Medical College of Georgia Research Institute. The first patent family contains two issued U.S. patents one that expired in 2019 and one that will expire in 2021 including claims to pharmaceutical compositions of 1-methyl-tryptophan (US 8,198,265). In addition, we have two granted US patents (US 9,732,035 and US 10,207,990) and worldwide pending patent applications covering indoximod prodrugs and novel formulations of indoximod (PCT/US2016/035391). We currently have granted non-U.S. patents covering indoximod prodrugs and novel formulations of indoximod in Singapore, Canada, Israel, New Zealand, South Africa, and Columbia. We cannot, however, ensure that we will be able to secure any similar patent grants in other jurisdictions.

We believe that significant barriers to entry in the IDO space are provided by a patent family covering compositions of matter and methods of use of different classes of IDO inhibitor compounds, and are fully owned by us: PCT/US2012/033245, which covers the IDO inhibitor compound NLG919. The national counterparts of the third family provide protection at least until 2032, not counting any patent term adjustment in the United States. This patent has been granted in the United States, Europe, Australia, China, Israel, Japan, Mexico, Hong Kong, Indonesia, Peru, Russia, Chile, Colombia, and New Zealand with multiple applications pending in other countries.

We have also added to our portfolio new patent applications claiming IDO inhibitors, TDO inhibitors and dual IDO/TDO inhibitors derived from our two-year research and collaboration effort with Genentech. These pending patent families are represented by their international applications PCT/CN2016/111730, PCT/US2018/038508, and PCT/US2018/039880.

Our NLG207 (formerly CRLX101) nanoparticle drug conjugate technology patent portfolio is represented by four main patent families. The main patent family claims compositions and methods of manufacturing of cyclodextrin-based polymers covalently linked to therapeutic agents for delivering the therapeutic agents to tumors, whereby the therapeutic agent is camptothecin or taxanes. This main patent family was exclusively licensed from Cerulean Pharma, Inc. by our fully owned subsidiary Bluelink to research, develop and commercialize NLG207 (along with a separate investigational product) as of March 19, 2017, and is represented by sixteen US granted patents expiring between 2023 and 2024 (US 7270808, US 8110179, US 8252276, US 8314230, US 8389499, US 8399431, US 8404662, US 8475781, US 8518388, US 8580244, US 8580242, US 8580243, US 8603454, US 8609081, US 8680202 and US 9550860), and by 58 granted international patents expiring in 2023 as well as by small number of US and international pending applications. In March of 2017, Cerulean Pharma Inc., sold its rights in the main patent family to Novartis, subject to Bluelink's continuing exclusive license in respect of NGL207 (and the second investigational product). The second patent family, owned by Bluelink and expiring in 2030, claims methods of use of cyclodextrin-containing polymer conjugated with camptothecin and is represented by twelve granted international patents (Australia, Belgium, Switzerland, Germany, France, United Kingdom, Hong Kong, Japan and Mexico) and pending applications in the United States, Brazil, India, and Japan. A third patent family, wholly owned by Bluelink and expiring in 2034, claims methods of use of NLG207 in combination with radiation, and is represented by one granted patent in Europe (EP 3049078) and a pending application in US. A fourth patent family wholly owned by Bluelink and expiring in 2037, claims the

use of cyclodextrin-containing polymer conjugated with camptothecin in combination with IDO and TDO inhibitors (PCT/US2017/ 064339).

In order to protect the confidentiality of our technology, including trade secrets and know-how and other proprietary technical and business information, we require all of our employees, consultants, advisors and collaborators to enter into confidentiality agreements that prohibit the use or disclosure of confidential information. The agreements also oblige our employees, consultants, advisors and collaborators to assign or license to us ideas, developments, discoveries and inventions made by such persons in connection with their work with us. We cannot be sure that these agreements will maintain confidentiality, will prevent disclosure, or will protect our proprietary information or intellectual property, or that others will not independently develop substantially equivalent proprietary information or intellectual property.

The pharmaceutical industry is highly competitive, and patents have been applied for by, and issued to, other parties relating to products or new technologies that may be competitive with those being developed by us. Therefore, any of our product candidates may give rise to claims that it infringes the patents or proprietary rights of other parties now or in the future. Furthermore, to the extent that we, our consultants, or manufacturing and research collaborators, use intellectual property owned by others in work performed for us, disputes may also arise as to the rights to such intellectual property or in related or resulting know-how and inventions. An adverse claim could subject us to significant liabilities to such other parties and/or require disputed rights to be licensed from such other parties. A license required under any such patents or proprietary rights may not be available to us or may not be available on acceptable terms. If we do not obtain such licenses, we may encounter delays in product market introductions, or may find that we are prevented from the development, manufacture or sale of products requiring such licenses. In addition, we could incur substantial costs in defending ourselves in legal proceedings instituted before patent and trademark offices in the United States, the European Union, or other ex-U.S. territories, or in a suit brought against us by a private party based on such patents or proprietary rights, or in a suit by us asserting our patent or proprietary rights against another party, even if the outcome is not adverse to us.

## **Licensing Agreements**

### **IDO Pathway Inhibitor Technology**

The following licensing agreement covers technologies and intellectual property rights related to our IDO pathway inhibitor technology and product candidates:

#### ***Augusta University Research Institute License Agreement***

We are a party to a License Agreement dated September 13, 2005 (the AURI IDO Agreement) with Augusta University Research Institute (AURI) which was formerly known as Georgia Regents Research Institute, the Georgia Health Sciences University Research Institute, Inc. and the Medical College of Georgia Research Institute. The AURI IDO Agreement was amended on March 28, 2006, April 27, 2006, February 13, 2007, July 12, 2013, July 10, 2014, and March 15, 2016. The AURI IDO Agreement grants us, including our affiliates, an exclusive, worldwide license, under specified AURI patent rights and related technology to make, use, import, sell and offer for sale products that are covered by licensed patent rights or incorporates or uses licensed technology in all medical applications.

Our license from AURI is subject to AURI's retained right to use, and to permit its academic research collaborators to use, such AURI patent rights and technology for research and educational purposes. In addition, the license is subject to certain rights of and obligations to the U.S. government under applicable law, to the extent that such intellectual property was created using funding provided by a U.S. federal agency. We may grant sublicenses under such license, subject to the prior approval of AURI, not to be unreasonably withheld or delayed.

In consideration of such license grant, we are obligated to pay to AURI specified license fees (including issuing shares of our common stock), annual license maintenance fees, reimbursement of patent prosecution costs, potential milestone payments in an aggregate amount up to approximately \$2.8 million per licensed product (which, as a result of the March 15, 2016 amendment, includes certain prodrugs of indoximod), and royalties as a single-digit percentage of net sales of the licensed products, subject to minimum royalty payments and royalty rates depending on the type of license product. In addition, if we grant a sublicense under the license granted by AURI, we must pay to AURI a percentage of the consideration we receive from the sublicensee. We made a milestone payment of \$1.0 million in connection with the March 15, 2016 amendment the AURI IDO Agreement.

If we fail to develop the licensed products in a non-cancer field, specifically infectious disease or diagnostics, AURI may convert our license in such field to a non-exclusive license.

On January 7, 2020, we notified AURI of our decision to discontinue maintenance of four issued U.S. patents covered by the AURI IDO Agreement (US 8,232,313, US 7,598,287, US 8,580,844, and US 9,463,239), thereby ending our rights to those patents. As a result, we maintain four U.S. patents under the AURI IDO Agreement (US 9,732,035, US 8,198,265, and US 7,465,448).

Unless terminated earlier, the AURI IDO Agreement will remain in effect until the expiration of the last licensed AURI patents. Pending the status of certain patent applications and the payment of appropriate maintenance, renewal, annuity or other governmental fees, we expect the last patent will expire under this agreement in 2027, excluding any patent term adjustments or patent term extensions or additional patents issued that are included under the license. AURI may terminate this agreement for our uncured material breach, bankruptcy or similar proceedings. We may terminate this agreement for AURI's uncured material breach or upon written notice to AURI. For a period of one year following the termination of the agreement, we may sell our licensed products that are fully manufactured and part of our normal inventory at the date of termination. We have the right to assign the AURI Agreement to our affiliates or in connection with the transfer of all or substantially all of our assets relating to the agreement, but any other assignment requires the prior written consent of AURI.

### **Vaccines for the Biodefense Field**

The following licensing agreement to which BPS is a party covers technology and intellectual property rights applicable to BPS's development of vaccines for the biodefense field:

#### ***Public Health Agency of Canada License Agreement***

BPS is a party to a license agreement with PHAC, dated May 4, 2010, which was amended and restated on December 5, 2017 (the PHAC License). Under the terms of the PHAC License, BPS has a worldwide, personal, non-transferable, sole, revocable, royalty-bearing license under specified patent rights and know-how, for the development and commercialization of products directed to the prevention, prophylaxis and treatment of Ebola (Zaire), a rVSV based on viral hemorrhagic fever (VHF virus) and a worldwide, personal, non-transferable, non-exclusive, revocable, royalty-bearing license, under specified patent rights and know-how, for the development and commercialization of products directed to the prevention, prophylaxis and treatment of Ebola (Sudan), a VHF virus. The license granted to BPS is subject to Canada's retained rights to use the licensed patent rights and technology to improve the patent rights, carry out educational purposes, and for the development of the patent rights where BPS cannot obtain regulatory approval or meet demand. BPS may also grant sublicenses under the PHAC License, provided that each sublicense is consistent with the terms and conditions of the PHAC License and contain certain mandatory sublicensing provisions.

We granted a sublicense under the PHAC License to Merck in November 2014 when we entered into a license and collaboration agreement with Merck to develop and potentially commercialize our Ebola vaccine product candidate. The PHAC License provides express consent for Merck to sublicense or subcontract its sublicensed rights under certain circumstances.

In consideration of the license grants, under the terms of the PHAC License, BPS must pay to Canada annual license maintenance fees, patent prosecution costs, potential milestone payments in an aggregate amount up to approximately \$250,000, and royalties as a low single-digit percentage of the sales price of the licensed products sold by BPS, its affiliates or sublicensees in countries outside of Africa and GAVI eligible countries, which royalty rate varies depending on whether additional technology licenses are required to sell the licensed product, and whether the licensed product is covered by a valid claim of a patent licensed under the PHAC License. A milestone payment of \$250,000 was due to PHAC upon approval of the Ebola vaccine and was paid by the Company to PHAC in December 2019. In addition to the milestones and royalties discussed above, BPS is required to pay to Canada a percentage in the low double digits of certain consideration BPS receives from Merck or any other sublicensee over specified thresholds. BPS is obligated to use commercially reasonable efforts to develop and market the licensed products. If BPS breaches its obligations and fails to cure the breach, PHAC may terminate the PHAC License.

In November 2014, we entered into the Merck Agreement which includes a sublicense of the patents subject to the PHAC License.

Unless terminated earlier, the PHAC License will remain in effect until the earlier of (i) July 28, 2033; or (ii) such time that BPS and its sublicensees cease all development and commercialization of the technologies that are licensed to the Company under the PHAC License. Canada may terminate this agreement for BPS's failure to use commercially reasonable efforts to commercialize, failure to pay, breach of confidentiality, cessation of business, criminal conviction or other breach of its obligations under the agreement. BPS may not assign the PHAC License to a third party without the prior written consent of Canada, not to be unreasonably withheld. This agreement will terminate automatically if BPS files for bankruptcy or similar proceedings or if BPS assigns the PHAC License under certain circumstances without prior written consent of Canada.

## **Government Regulation**

We operate in a highly regulated industry that is subject to significant federal, state, local and foreign regulation. Our present and future business has been, and will continue to be, subject to a variety of laws including, the Federal Food, Drug, and Cosmetic Act (FDCA) and the Public Health Service Act, among others.

The FDCA and other federal and state statutes and regulations govern the testing, manufacture, safety, effectiveness, labeling, storage, record keeping, approval, advertising and promotion of our products. As a result of these laws and regulations, product development and product approval processes are very expensive and time consuming.

### **FDA Approval Process**

In the United States, pharmaceutical products, including biologics, are subject to extensive regulation by the FDA. The FDCA and other federal and state statutes and regulations govern, among other things, the research, development, testing, manufacture, storage, recordkeeping, approval, labeling, promotion and marketing, distribution, post-approval monitoring and reporting, sampling, and import and export of pharmaceutical products. Failure to comply with applicable U.S. requirements may subject a company to a variety of administrative or judicial sanctions, such as FDA refusal to approve pending new drug applications (NDAs), or BLAs, warning letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, fines, civil penalties, and criminal prosecution.

Pharmaceutical product development in the U.S. typically involves preclinical laboratory and animal tests, the submission to the FDA of an IND, which must become effective before clinical testing may commence, and adequate and well-controlled clinical trials to establish the safety and effectiveness of the drug or biologic for each indication for which FDA approval is sought. Satisfaction of FDA pre-market approval requirements typically takes many years and the actual time required may vary substantially based upon the type, complexity and novelty of the product or disease.

Preclinical tests include laboratory evaluation as well as animal trials to assess the characteristics and potential pharmacology and toxicity of the product. The conduct of the preclinical tests must comply with federal regulations and requirements including good laboratory practices. The results of preclinical testing are submitted to the FDA as part of an IND along with other information including information about product chemistry, manufacturing and controls and a proposed clinical trial protocol. Long term preclinical tests, such as animal tests of reproductive toxicity and carcinogenicity, may continue after the IND is submitted.

A 30-day waiting period after the submission of each IND is required prior to the commencement of clinical testing in humans. If the FDA has not objected to the IND within this 30-day period, the clinical trial proposed in the IND may begin.

Clinical trials involve the administration of the investigational new drug to healthy volunteers or patients under the supervision of a qualified investigator. Clinical trials must be conducted in compliance with federal regulations, good clinical practices (GCP) as well as under protocols detailing the objectives of the trial, the parameters to be used in monitoring safety and the effectiveness criteria to be evaluated. Each protocol involving testing on U.S. patients and subsequent protocol amendments must be submitted to the FDA as part of the IND.

The FDA may order the temporary or permanent discontinuation of a clinical trial at any time or impose other sanctions if it believes that the clinical trial is not being conducted in accordance with FDA requirements or presents an unacceptable risk to the clinical trial patients. The clinical trial protocol and informed consent information for patients in clinical trials must also be submitted to an institutional review board (IRB), for approval. An IRB may also require the clinical trial at the site to be halted, either temporarily or permanently, for failure to comply with the IRB's requirements, or may impose other conditions. Clinical trials to support NDAs or BLAs, which are applications for marketing approval, are typically conducted in three sequential phases, but the phases may overlap. In Phase 1, the initial introduction of the drug into healthy human subjects or patients, the drug is tested to assess metabolism, pharmacokinetics, pharmacological actions, side effects associated with increasing doses and, if possible, early evidence on effectiveness. Phase 2 usually involves trials in a limited patient population, to determine the effectiveness of the drug for a particular indication or indications, dosage tolerance and optimum dosage, and identify common adverse effects and safety risks.

If a compound demonstrates evidence of effectiveness and an acceptable safety profile in Phase 2 evaluations, Phase 3 clinical trials are undertaken to obtain additional information about clinical efficacy and safety in a larger number of patients, typically at geographically dispersed clinical trial sites, to permit the FDA to evaluate the overall benefit-risk relationship of the drug and to provide adequate information for the labeling of the drug.

In the case of product candidates for severe or life-threatening diseases such as cancer, the initial human testing is often conducted in patients rather than in healthy volunteers. Since these patients already have the target disease, these studies may provide initial evidence of efficacy traditionally obtained in Phase 2 clinical trials and thus these trials are frequently referred to as Phase 1b clinical trials. Additionally, when product candidates can damage normal cells, it is not ethical to administer such drugs to healthy patients in a Phase 1 clinical trial. After completion of the required clinical testing, an NDA or, in the case of a biologic, a BLA, is prepared and submitted to the FDA. FDA approval of the marketing application is required before marketing of the product may begin in the U.S. The marketing application must include the results of all preclinical, clinical and other testing and a compilation of data relating to the product's pharmacology, chemistry, manufacture, and controls. Submission of an NDA or BLA also requires the payment of a substantial user fee, unless a waiver applies.

The FDA has 60 days from its receipt of an NDA or BLA to determine whether the application will be accepted for filing based on the agency's threshold determination that it is sufficiently complete to permit substantive review. Once the submission is accepted for filing, the FDA begins an in-depth review. The FDA has agreed to certain performance goals in the review of marketing applications. Most such applications for non-priority drug products are reviewed within 10 months of their acceptance for filing, and for priority designated applications, within six months of their acceptance for filing. The review process may be extended by the FDA for three additional months to consider new information submitted during the review or clarification regarding information already provided in the submission. The FDA may also refer applications for novel drug products or drug products which 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. The FDA is not bound by the recommendation of an advisory committee, but it generally follows such recommendations. Before approving a marketing application, the FDA will typically inspect one or more clinical sites to assure compliance with GCP. The FDA may also inspect one or more non-clinical study sites to assure compliance with GLP. Additionally, the FDA will inspect the proposed facility or the facilities at which the drug substance or drug product is manufactured, tested, packaged or labeled. The FDA will not approve the product unless it has compliance with GCP, GLP, and current good manufacturing practices (cGMPs) and the marketing application (the NDA or, in the case of biologics, the BLA) contains data that provide substantial evidence that the drug is safe and effective in the indication or indications studied. Manufacturers of biologics also must comply with FDA's general biological product standards to demonstrate that the product is safe, pure and potent.

After the FDA evaluates the marketing application and the manufacturing facilities, it issues an Approval Letter, or a Complete Response letter. A Complete Response letter outlines the deficiencies in the submission and may require substantial additional testing or information in order for the FDA to reconsider the application. If and when those deficiencies have been addressed in a resubmission of the marketing application, the FDA will re-initiate review. If it is satisfied that the deficiencies have been addressed, the FDA will issue an Approval Letter. The FDA has committed to reviewing such resubmissions in two or six months depending on the type of information included. It is not unusual for the FDA to issue a Complete Response letter because it believes that the drug is not safe enough or effective enough or because it does not believe that the data submitted are reliable or conclusive.

An Approval Letter authorizes commercial marketing of the drug with specific prescribing information for specific indication or indications. As a condition of approval of the marketing application, the FDA may require substantial post-approval testing and surveillance to monitor the drug's safety or efficacy and may impose other conditions, including labeling restrictions and risk evaluation and mitigation strategies, which can materially affect the potential market and profitability of the drug. Once granted, product approvals may be withdrawn if compliance with regulatory standards is not maintained or problems are identified following initial marketing.

### ***The Hatch-Waxman Act***

In seeking approval for marketing of a drug or biologic through an NDA or BLA, respectively, applicants are required to list with the FDA each patent with claims that cover the applicant's product or FDA approved method of using this product. Upon approval of a product, each of the patents listed in the application for the drug is then published in the FDA's Approved Drug Products with Therapeutic Equivalence Evaluations, commonly known as the Orange Book. Drugs listed in the Orange Book can, in turn, be cited by potential competitors in support of approval of an abbreviated new drug application (ANDA). An ANDA provides for marketing of a drug product that has the same active ingredients in the same strengths and dosage form as the listed drug and has been shown through bioequivalence testing to be therapeutically equivalent to the listed drug. ANDA applicants are not required to conduct or submit results of preclinical or clinical tests to prove the safety or effectiveness of their drug product, other than the requirement for bioequivalence testing. Drugs approved in this way are commonly referred to as "generic equivalents" to the listed drug and can often be substituted by pharmacists under prescriptions written for the original listed drug.

The ANDA applicant is required to certify to the FDA concerning any patents listed for the approved product in the FDA's Orange Book. Specifically, the applicant must certify that: (i) the required patent information has not been filed; (ii) the listed patent has expired; (iii) the listed patent has not expired, but will expire on a particular date and approval is sought after patent expiration; or (iv) the listed patent is invalid or will not be infringed by the new product. A certification that the new product will not infringe the already approved product's listed patents or that such patents are invalid is called a Paragraph IV certification. If the applicant does not challenge the listed patents, the ANDA application will not be approved until all the listed patents claiming the referenced product have expired.

If the ANDA applicant has provided a Paragraph IV certification to the FDA, the applicant must also send notice of the Paragraph IV certification to the NDA applicant and patent holders once the ANDA has been accepted for filing by the FDA. The NDA applicant and patent holders may then initiate a patent infringement lawsuit in response to the notice of the Paragraph IV certification. The filing of a patent infringement lawsuit within 45 days of the receipt of a Paragraph IV certification notification automatically prevents the FDA from approving the ANDA until the earlier of 30 months, expiration of the patent, settlement of the lawsuit or a decision in the infringement case that is favorable to the ANDA applicant.

The ANDA application also will not be approved until any non-patent exclusivity, such as exclusivity for obtaining approval of a new chemical entity, listed in the Orange Book for the referenced product has expired. Federal law provides a period of five years following approval of a drug containing no previously approved active moiety, during which ANDAs for generic versions of those drugs cannot be submitted unless the submission contains a Paragraph IV challenge to a listed patent, in which case the submission may be made four years following the original product approval. Federal law provides for a period of three years of exclusivity following approval of a listed drug that contains previously approved active ingredients but is approved in a new dosage form, route of administration or combination, or for a new use, the approval of which was required to be supported by new clinical trials conducted by or for the sponsor, during which the FDA cannot grant effective approval of an ANDA based on that listed drug.

### ***Ongoing Regulatory Requirements***

Once an NDA or BLA is approved, a product will be subject to certain post-approval requirements. For instance, the FDA closely regulates the post-approval marketing and promotion of drugs, including standards and regulations for direct-to-consumer advertising, off-label promotion, industry-sponsored scientific and educational activities and promotional activities involving the internet.

Drugs may be marketed only for the approved indication or indications and in accordance with the provisions of the approved labeling. However, physicians, in the practice of medicine, may prescribe approved drugs for unapproved indications. Companies may also share truthful and not misleading information that is otherwise consistent with the labeling. Changes to some of the conditions established in an approved application, including changes in indications, labeling, or manufacturing processes or facilities, require submission and FDA approval of a new NDA or NDA supplement, or in the case of biologics, a new BLA or BLA supplement, before the change can be implemented. An NDA or BLA supplement for a new indication typically requires clinical data similar to that in the original application, and the FDA uses the same procedures and actions in reviewing NDA and BLA supplements as it does in reviewing NDAs and BLAs. We cannot be certain that the FDA or any other regulatory agency will grant approval for our product candidates for any other indications or any other product candidate for any indication on a timely basis, if at all.

Adverse event reporting and submission of periodic reports is required following FDA approval of an NDA or BLA. The FDA also may require post-marketing testing, known as Phase 4 testing, risk evaluation and mitigation strategies, and surveillance to monitor the effects of an approved product or place conditions on an approval that could restrict the distribution or use of the product. In addition, quality control as well as drug manufacture, packaging, and labeling procedures must continue to conform to cGMPs, after approval. Drug manufacturers and certain of their subcontractors are required to register their establishments with FDA and certain state agencies, and are subject to periodic unannounced, routine or for-cause inspections by the FDA during which the agency inspects manufacturing facilities to access compliance with cGMPs. Accordingly, manufacturers must continue to expend time, money and effort in the areas of production and quality control to maintain compliance with cGMPs. Regulatory authorities may withdraw product approvals or request product recalls if a company fails to comply with regulatory standards, if it encounters problems following initial marketing, or if previously unrecognized problems are subsequently discovered.

### ***U.S. Foreign Corrupt Practices Act***

The U.S. Foreign Corrupt Practices Act, to which we are subject, prohibits 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, offer

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.

### ***Federal and State Healthcare Laws***

In addition to FDA restrictions on marketing of pharmaceutical products, several other types of state and federal laws have been applied to increase the transparency of and restrict certain marketing practices in the pharmaceutical and medical device industries in recent years. These laws include the Physician Payments Sunshine Act, anti-kickback statutes and false claims statutes.

Federal and state healthcare laws, including fraud and abuse and health information privacy and security laws, are also applicable to our business. If we fail to comply with federal and state healthcare laws, we could face substantial penalties, such as such as fines, disgorgement, imprisonment, exclusion from government-funded healthcare programs, and integrity oversight and reporting obligations, and our business, results of operations, financial condition and prospects could be adversely affected. The laws that may affect our ability to operate include: the federal Anti-Kickback Statute, which prohibits soliciting, receiving, offering or paying remuneration, directly or indirectly, to induce, or in return for, the purchase or recommendation of an item or service reimbursable under a federal healthcare program, such as the Medicare and Medicaid programs; federal civil and criminal false claims laws and civil monetary penalty laws, which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid, or other third-party payers that are false or fraudulent; the federal Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA) which created additional federal criminal statutes that prohibit executing a scheme to defraud any healthcare benefit program and making false statements relating to healthcare matters and was amended by the Health Information Technology and Clinical Health Act (HITECH) and its implementing regulations, which imposes certain requirements relating to the privacy, security and transmission of individually identifiable health information; and the Physician Payments Sunshine Act, which requires certain pharmaceutical manufacturers to annually report information to CMS, as defined below, related to payments and other transfers of value to physicians, certain other healthcare providers and institutions, as well as ownership and investment interests held by such healthcare providers and their immediate family members. There are also state law equivalents of each of the above federal laws, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts. In addition, certain states require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government and certain states and local jurisdictions require the registration of pharmaceutical sales representatives.

### ***Regulation Outside the United States***

Drugs are also subject to extensive regulation outside of the United States. Whether or not we obtain approval in the United States, we will be subject to separate regulatory approval standards in foreign countries. In the E.U., for example, there is a centralized approval procedure that authorizes marketing of a product in all countries of the E.U. (which includes most major countries in Europe). If this procedure is not used, approval in one country of the E.U. can be used to obtain approval in another country of the E.U. under two simplified application processes, the mutual recognition procedure or the decentralized procedure, both of which rely on the principle of mutual recognition. After regulatory approval is received through any of the European registration procedures, pricing and reimbursement approvals are also required in most countries.

### ***Price Controls***

Significant uncertainty exists as to the coverage and reimbursement status of products approved by the FDA and other government authorities. In many of the markets where we may do business in the future, the prices of pharmaceutical products are subject to direct price controls (by law) and to reimbursement programs with varying price control mechanisms. In the United States, the Medicare program is administered by the Centers for Medicare & Medicaid Services (CMS) an agency within the U.S. Department of Health and Human Services (HHS). Coverage and reimbursement for products and services under Medicare are determined pursuant to regulations promulgated by CMS and pursuant to CMS's subregulatory coverage and reimbursement determinations. It is difficult to predict how CMS may apply those regulations and subregulatory determinations to newly approved products, especially novel products, and those regulations and interpretive determinations are subject to change. Moreover, the methodology under which CMS makes coverage and reimbursement determinations is subject to change, particularly because of budgetary pressures facing the Medicare program. Medicare regulations and interpretive determinations also may determine who may be reimbursed for certain services.

The containment of healthcare costs has become a priority of federal, state and foreign governments, and the prices of drugs have been a focus in this effort. Third-party payors are increasingly challenging the prices charged for medical products

and services and examining the medical necessity and cost-effectiveness of medical products and services, in addition to their safety and efficacy. If these third-party payors do not consider a drug product to be cost effective compared to other available therapies, they may not cover the product after approval as a benefit under their plans or, if they do, the level of payment may not be sufficient to allow a company to sell its products at a profit. The U.S. government, state legislatures and foreign governments have shown significant interest in implementing cost containment programs to limit the growth of government-paid health care costs, including price controls, risk sharing, restrictions on reimbursement and requirements for substitution of generic products for branded prescription drugs. Such interest has resulted in several recent U.S. 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 products. For example, on May 11, 2018, the President Trump laid out his administration's "Blueprint" to lower drug prices and reduce out of pocket costs of drugs that contains additional proposals to increase manufacturer competition, increase the negotiating power of certain federal healthcare programs, incentivize manufacturers to lower the list price of their products and reduce the out of pocket costs of drug products paid by consumers. HHS has solicited feedback on some of these measures and, at the same time, has implemented others under its existing authority. Further, the Trump administration's budget proposal for fiscal year 2020 contains further drug price control measures that could be enacted during the budget process or in other future legislation, including, for example, measures to permit Medicare Part D plans to negotiate the price of certain drugs under Medicare Part B, to allow some states to negotiate drug prices under Medicaid, and to eliminate cost sharing for generic drugs for low-income patients. Although some of these and other proposals may require additional authorization to become effective, the U.S. congress and the Trump administration have each indicated that it will continue to seek new legislative and/or administrative measures to control drug costs. These controls and measures, and tightening of restrictive policies in jurisdictions with existing controls and measures, could limit payments for pharmaceuticals. As a result, the marketability of any product which receives regulatory approval for commercial sale may suffer if the government and third-party payors fail to provide adequate coverage and reimbursement.

In addition, an increasing emphasis on managed care in the United States has increased and will continue to increase the pressure on drug pricing. Coverage policies, third-party reimbursement rates and drug pricing regulation may change at any time. In particular, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act (ACA) contains provisions that may reduce the profitability of drug products, including, for example, increased rebates for drugs sold to Medicaid programs, extension of Medicaid rebates to Medicaid managed care plans, mandatory discounts for certain Medicare Part D beneficiaries and annual fees based on pharmaceutical companies' share of sales to federal health care programs. In the years since its enactment, there have been, and continue to be, significant developments in, and continued legislative activity around, attempts to repeal or repeal and replace the ACA. For example, the 2020 federal spending package permanently eliminated, effective January 1, 2020, the ACA-mandated "Cadillac" tax on high-cost employer-sponsored health coverage and medical device tax and, effective January 1, 2021, also eliminates the health insurer tax. On December 14, 2018, a Texas U.S. District Court Judge ruled that the ACA is unconstitutional in its entirety because the "individual mandate" was repealed by the U.S. congress as part of the Tax Cuts and Jobs Act of 2017 (the Tax Act). Additionally, 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 back to the District Court to determine whether the remaining provisions of the ACA are invalid as well. It is unclear how this decision, future decisions, subsequent appeals, and other efforts to repeal and replace the ACA will impact the ACA and our business.

In the European Union, governments influence the price of pharmaceutical products through their pricing and reimbursement rules and control of national health care systems that fund a large part of the cost of such products to consumers. The approach taken varies from member state to member state. Some jurisdictions operate positive or negative list systems under which products may only be marketed once a reimbursement price has been agreed. Other member states allow companies to fix their own prices for medicines, but monitor and control company profits. The downward pressure on health care 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, as exemplified by the role of the National Institute for Health and Clinical Excellence in the United Kingdom, which evaluates the data supporting new medicines and passes reimbursement recommendations to the government. In addition, in some countries cross-border imports from low-priced markets (parallel imports) exert commercial pressure on pricing within a country.

### ***Other Regulations***

We are also subject to numerous federal, state and local laws relating to such matters as safe working conditions, manufacturing practices, environmental protection, fire hazard control, and disposal of hazardous or potentially hazardous substances and biological materials. We may incur significant costs to comply with such laws and regulations now or in the future.

## **Legal Proceedings**

In addition to the legal proceedings described in Note 14 to the consolidated financial statements included in Item 8 of this Form 10-K, we may be subject to various legal proceedings and claims that arise in the ordinary course of our business activities. Although the results of litigation and claims cannot be predicted with certainty, we do not believe we are party to any claim or litigation the outcome of which, if determined adversely to us, would individually or in the aggregate be reasonably expected to have a material adverse effect on our business. 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.

## **Employees**

As of December 31, 2019, we had 21 employees. None of our employees are subject to a collective bargaining agreement or represented by a labor or trade union, and we believe that our relations with our employees are good.

## **Facilities**

Our executive offices and manufacturing facilities are located in the Iowa State University Research Park in Ames, Iowa. We have approximately 26,616 square feet, comprising executive office space and space dedicated to manufacturing, testing and product storage, leased with the Iowa State University Research Park Corporation. The lease expires March 31, 2021, and we do not intend to exercise our option to extend the lease. We also leased an additional 23,544 square feet in Ames, Iowa which expired on January 31, 2020 and was not renewed.

We leased 2,686 square feet of additional executive and administrative space in Austin, Texas under a lease that expired on December 31, 2019 and was not renewed. We lease an additional 3,255 square feet of office space in Wayne, Pennsylvania under a lease that expires in February 2021. On February 28, 2020, we signed a sublease agreement for the Wayne, Pennsylvania space.

## **Corporate Information**

We were incorporated in the state of Delaware on June 4, 1999 under the name “NewLink Genetics Corporation.”

## **Available Information**

We view our operations and measure our business as one reportable segment operating primarily in the United States. See Note 2 to our audited consolidated financial statements included elsewhere in this Annual Report on Form 10-K for additional information. Additional information required by this item is incorporated herein by reference to Part II, Item 6 “Selected Financial Data.”

Our website address is [www.newlinkgenetics.com](http://www.newlinkgenetics.com); however, information found on, or that can be accessed through, our website is not incorporated by reference into this Annual Report on Form 10-K. We make available free of charge on or through our website copies of our Annual Report, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC.

You can read our SEC filings over the Internet at the SEC’s web site at [www.sec.gov](http://www.sec.gov).

## Item 1A. RISK FACTORS

### RISK FACTORS

*Investing in our common stock involves significant risks, some of which are described below. In evaluating our business, investors should carefully consider the following risk factors. These risk factors contain, in addition to historical information, forward-looking statements that involve substantial risks and uncertainties. Our actual results could differ materially from the results discussed in the forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed below. The order in which the following risks are presented is not intended to reflect the magnitude of the risks described. The occurrence of any of the following risks could have a material adverse effect on our business, financial condition, results of operations and prospects. In that case, the trading price of our common stock could decline, and you may lose all or part of your investment. Except for the important risk factors relating to consummation of the proposed Merger with Lumos, the following risk factors have been prepared as if the Merger will not be consummated. However, many of the same risks identified below will continue to apply to the combined company if the Merger is consummated.*

#### Risks Related to the Merger

***If the proposed Merger with Lumos is not consummated, our business could suffer materially and our stock price could decline.***

The consummation of the proposed Merger with Lumos is subject to a number of closing conditions, including the approval by NewLink stockholders and other customary closing conditions. We are targeting a closing of the Merger by the first quarter of 2020.

If the proposed Merger is not consummated, we may be subject to a number of material risks, and our business and stock price could be materially adversely affected, as follows:

- we may not be able to continue to operate NewLink on a stand-alone basis given current market sentiment toward IDO inhibitors as a class and the likelihood that market conditions for NewLink would not change for the benefit of NewLink stockholders in the foreseeable future on a stand-alone basis;
- we have incurred and expect to continue to incur significant expenses related to the proposed Merger with Lumos even if the Merger is not consummated;
- the Merger Agreement contains covenants relating to our solicitation of competing acquisition proposals and the conduct of our business between the date of signing the Merger Agreement and the closing of the Merger. Accordingly, we may be unable to pursue business opportunities that would otherwise be in our best interest as a standalone company;
- we may be obligated to pay Lumos a \$2.0 million termination fee in connection with the termination of the Merger Agreement;
- our customers, manufacturers, partners and other investors in general may view the failure to consummate the Merger as a poor reflection on our business or prospects;
- some of our manufacturers and other business partners may seek to change or terminate their relationships with us as a result of the proposed Merger;
- as a result of the proposed Merger, current and prospective employees could experience uncertainty about their future roles within the combined company. This uncertainty may adversely affect our ability to retain our key employees, who may seek other employment opportunities;
- our workforce reduction costs may be greater than anticipated and our recent workforce reduction may have an adverse impact on our development activities;
- our management team may be distracted from day to day operations as a result of the proposed Merger; and
- the market price of our common stock may decline to the extent that the current market price reflects a market assumption that the proposed Merger will be completed.

In addition, if the Merger Agreement is terminated and the NewLink Board determines to seek another business combination, it may not be able to find a third party willing to provide equivalent or more attractive consideration than the consideration to be provided by each party in the Merger. In such circumstances, the NewLink Board may elect to, among other things, seek to out-license or partner with respect to our product candidates, divest all or a portion of our business, or take the steps necessary to

liquidate all of our business and assets, and in either such case, the consideration that we receive may be less attractive than the consideration to be received by us pursuant to the Merger Agreement.

***The exchange ratios are not adjustable based on the market price of NewLink's common stock so the merger consideration at the closing may have a greater or lesser value than at the time the Merger Agreement was signed.***

Pursuant to the Merger Agreement, the applicable exchange ratios are included in Lumos' amended and restated certificate of incorporation, which does not include a price-based termination right and there will be no adjustment to the total number of shares of NewLink's common stock that Lumos stockholders and optionholders will be entitled to receive for changes in the market price of NewLink's common stock. Any changes in the market price of NewLink's common stock before the completion of the Merger will not affect the number of shares Lumos stockholders will be entitled to receive pursuant to the Merger Agreement. Therefore, if before the completion of the Merger the market price of NewLink's common stock increases from the market price on the date of the Merger Agreement, then Lumos stockholders could receive merger consideration with substantially more value for their shares of Lumos capital stock than the parties had negotiated for in the establishment of the exchange ratios.

***Failure to complete the Merger may result in NewLink paying a termination fee or expenses to Lumos and could harm the common stock price of NewLink and future business and operations of NewLink.***

If the Merger is not completed, we are subject to the following risks:

- if the Merger Agreement is terminated under certain circumstances, we may be required to pay a termination fee to Lumos of \$2,000,000;
- the price of our stock may decline and remain volatile; and
- significant costs related to the Merger, such as legal and accounting fees which must be paid even if the Merger is not completed.

In addition, if the Merger Agreement is terminated and the NewLink Board determines to seek another business combination, there can be no assurance that we will be able to find a partner willing to provide equivalent or more attractive consideration than the consideration to be provided by Lumos.

***If the conditions to the Merger are not met, the Merger may not occur.***

Even if the Merger is approved by the NewLink stockholders, specified conditions must be satisfied or waived to complete the Merger. These conditions are set forth in the Merger Agreement. We cannot assure you that all of the conditions will be satisfied or waived. If the conditions are not satisfied or waived, the Merger may not occur or will be delayed, and we may lose some or all of the intended benefits of the Merger.

***The market price of the combined company's common stock may decline as a result of the Merger.***

The market price of the combined company's common stock may decline as a result of the Merger for a number of reasons including if:

- the combined company does not achieve the perceived benefits of the Merger as rapidly or to the extent anticipated by financial or industry analysts;
- the effect of the Merger on the combined company's business and prospects is not consistent with the expectations of financial or industry analysts; or
- investors react negatively to the effect on the combined company's business and prospects from the Merger.

***NewLink stockholders may not realize a benefit from the Merger commensurate with the ownership dilution they will experience in connection with the Merger.***

If the combined company is unable to realize the strategic and financial benefits currently anticipated from the Merger, NewLink stockholders will have experienced substantial dilution of their ownership interest without receiving any commensurate benefit. Significant management attention and resources will be required to integrate the two companies. Delays in this process could adversely affect the combined company's business, financial results, financial condition and stock price following the Merger. Even if the combined company were able to integrate the business operations successfully, there can be no assurance that this integration will result in the realization of the full benefits of synergies, innovation and operational efficiencies that may be possible from this integration and that these benefits will be achieved within a reasonable period of time.

***During the pendency of the Merger, NewLink may not be able to enter into a business combination with another party and will be subject to contractual limitations on certain actions because of restrictions in the Merger Agreement.***

Covenants in the Merger Agreement impede the ability of NewLink to make acquisitions or complete other transactions that are not in the ordinary course of business pending completion of the Merger. As a result, if the Merger is not completed, NewLink may be at a disadvantage to its competitors. In addition, while the Merger Agreement is in effect and subject to limited exceptions, each party is prohibited from soliciting, initiating, encouraging or taking actions designed to facilitate any inquiries or the making of any proposal or offer that could lead to the entering into certain extraordinary transactions with any third party, such as a sale of assets, an acquisition of NewLink's common stock, a tender offer for NewLink's common stock or a merger or other business combination outside the ordinary course of business. Any such transactions could be favorable to NewLink stockholders.

***We may become involved in securities litigation or stockholder derivative litigation in connection with the Merger, and this could divert the attention of management and harm the combined company's business, and insurance coverage may not be sufficient to cover all related costs and damages.***

Securities litigation or stockholder derivative litigation frequently follows the announcement of certain significant business transactions, such as the sale of a business division or announcement of a business combination transaction. We may become involved in this type of litigation in connection with the Merger, and the combined company may become involved in this type of litigation in the future. Litigation often is expensive and diverts management's attention and resources, which could adversely affect the business of NewLink and the combined company.

***We are substantially dependent on our remaining employees to facilitate the consummation of the Merger.***

We have substantially reduced our workforce since September 2019. Our ability to successfully complete the proposed Merger depends in large part on our ability to retain our remaining personnel. Despite our efforts to retain these employees, one or more may terminate their employment with us on short notice. The loss of the services of any of these employees could potentially harm our ability to consummate the proposed Merger, to run our day-to-day business operations, as well as to fulfill our reporting obligations as a public company.

## **Business Risks**

### **Risks Related to Clinical Development and Commercialization of Our Product Candidates**

***If our product candidates do not meet safety and efficacy endpoints in clinical trials, they will not receive regulatory approval, and we will be unable to market them. We have not completed testing of any of our product candidates in controlled clinical trials.***

The clinical development and regulatory approval process is expensive and time-consuming. The timing of any future product approval cannot be accurately predicted. If we fail to obtain regulatory approval for our current or future product candidates, we will be unable to market and sell them, and therefore we may never be profitable.

As part of the regulatory process, we must conduct clinical trials for each product candidate to demonstrate safety and efficacy to the satisfaction of the FDA and other regulatory authorities abroad. The number and design of clinical trials that will be required varies depending on the product candidate, the condition being evaluated, the trial results and regulations applicable to any particular product candidate. Any inability to successfully complete preclinical and clinical development could result in additional costs to us.

Prior clinical trial program designs and results are not necessarily predictive of future clinical trial designs or results. Initial results may not be confirmed upon full analysis of the detailed results of a trial. Product candidates in later-stage clinical trials may fail to show the desired safety and efficacy despite having progressed through initial clinical trials with acceptable endpoints. A number of companies in the biopharmaceutical industry have suffered significant setbacks in advanced clinical trials due to lack of efficacy or unacceptable safety issues, notwithstanding promising results in earlier trials. Most product candidates that commence clinical trials are never approved as products.

***We will remain heavily dependent on the success of the clinical development of our drug product candidates, and if we fail to complete clinical trials, fail to demonstrate safety and efficacy in those clinical trials, fail to obtain regulatory approval or fail to commercialize any of our current or future drug product candidates successfully, our business, financial condition and results of operations would be harmed.***

Our clinical development program currently encompasses a number of Phase 1 and 2 combination trials across multiple cancer indications. If we fail to complete any of these trials or fail to obtain regulatory approval, our ability to commercialize indoximod will be materially and adversely affected and our business, financial condition and results of operations would be harmed.

***If we make changes to any of our product candidates, additional clinical trials may be required resulting in additional costs and delays.***

We have an ongoing research program to investigate potential opportunities to improve the potency, efficacy and/or safety profile of some of our product candidates through modifications to their formulations or chemical compositions. These efforts may not be successful. If a new formulation or composition appears promising, we may decide to undertake clinical development of such formulation or composition even if an existing product candidate has shown acceptable safety and efficacy in clinical trials. The nature and extent of additional clinical trials that might be required for a new formulation or composition would depend on many factors. If we were to decide to pursue clinical development of a new formulation or composition, we would incur additional costs and the timeline for potential commercialization would be delayed. There can be no assurance that any new formulation or composition would prove to be safe or effective or superior to an existing product candidate. Any delay in commercialization of a new formulation or composition may adversely affect our competitive position.

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

Because we have limited financial and managerial resources, we must focus on research programs and product candidates for the specific indications that we believe are the most scientifically and commercially promising. As a result, we have in the past determined to let certain of our development projects remain idle, including by allowing IND applications to lapse into inactive status, and we may in the future decide to forego or delay pursuit of opportunities with other product candidates or other indications that later prove to have greater scientific or commercial potential. Our resource allocation decisions may cause us to fail to capitalize on viable scientific or commercial products or profitable market opportunities. In addition, we may spend valuable time and managerial and financial resources on research programs and product candidates for specific indications that ultimately do not yield any scientifically or commercially viable products. Furthermore, our resource allocation decisions and our decisions about whether and how to develop or commercialize any particular product candidate may be based on evaluations of the scientific and commercial potential or target market for the product candidate that later prove to be materially inaccurate. If we enter into collaborations, licensing or other royalty arrangements to develop or commercialize a particular product candidate, we may relinquish valuable rights to that product candidate in situations where it would have been more advantageous for us to retain sole rights to development and commercialization.

***We may face delays in completing our clinical trials, or we may not be able to complete them at all.***

We have not completed all of the clinical trials necessary to support an application with the FDA for approval to market any of our product candidates. Our current and future clinical trials may be delayed or terminated as a result of many factors, including:

- we may experience delays or failure in reaching agreement on acceptable clinical trial contracts or clinical trial protocols with prospective sites;
- regulators or institutional review boards may not authorize us to commence a clinical trial;
- regulators or institutional review boards may suspend or terminate clinical research for various reasons, including noncompliance with regulatory requirements or concerns about patient safety;
- we may suspend or terminate our clinical trials if we believe that they expose the participating patients to unacceptable health risks;
- we may need to reformulate or change the dosing of our product candidates;
- our clinical trials may have slower than expected patient enrollment or lack of a sufficient number of patients that meet their enrollment criteria;

- patients may not complete clinical trials due to safety issues, side effects, dissatisfaction with the product candidate, or other reasons;
- we may experience difficulty in maintaining contact with patients after treatment, preventing us from collecting the data required by our clinical trial protocol;
- product candidates may demonstrate a lack of efficacy during clinical trials;
- our third-party contractors, including those manufacturing our product candidates or components of ingredients thereof or conducting clinical trials on our behalf, may fail to comply with regulatory requirements or meet their contractual obligations to us in a timely manner or at all;
- the supply or quality of raw materials or manufactured product candidates or other materials necessary to conduct clinical trials of our product candidates may be insufficient, inadequate or not available at an acceptable cost, or we may experience interruptions in supply;
- we may experience governmental or regulatory delays, failure to obtain regulatory approval or changes in regulatory requirements, policy and guidelines;
- enrollment in and conduct of our clinical trials may be adversely affected by the regulatory approval of competing agents in this class, competition with ongoing clinical trials or scheduling conflicts with participating clinicians; and
- we may experience delays in achieving clinical trial endpoints and completing data analysis for a trial.

In addition, we rely on academic institutions, physician practices and clinical research organizations to conduct, supervise or monitor some or all aspects of clinical trials involving our product candidates. We have less control over the timing and other aspects of these clinical trials than if we conducted the monitoring and supervision entirely on our own. Third parties may not perform their responsibilities for our clinical trials on our anticipated schedule or consistent with a clinical trial protocol or applicable regulations. We also may rely on clinical research organizations to perform our data management and analysis. They may not provide these services as required or in a timely or compliant manner.

Moreover, our development costs will increase if we are required to complete additional or larger clinical trials for our product candidates prior to FDA approval. If the delays or costs are significant, our financial results and ability to commercialize our product candidates will be adversely affected.

***If we encounter difficulties enrolling patients in our clinical trials, our clinical trials could be delayed or otherwise adversely affected.***

Clinical trials for our product candidates require us to identify and enroll a large number of patients with the disease under investigation, or healthy volunteers willing to participate in certain trials. We may not be able to enroll a sufficient number of patients, or those with required or desired characteristics to achieve diversity in a clinical trial, to complete our clinical trials in a timely manner. Patient enrollment is affected by factors including:

- severity of the disease under investigation;
- design of the trial protocol;
- size of the patient population;
- eligibility criteria for the clinical trial in question;
- perceived risks and benefits of the product candidate under study;
- changes in the standard of care that make the trial as designed less attractive to clinicians and patients;
- availability of competing therapies and clinical trials, including announced clinical trials evaluating potentially competing IDO pathway inhibitors in clinical settings similar to our clinical trials;
- the results of clinical trials of other IDO pathway inhibitors;
- efforts to facilitate timely enrollment in clinical trials;
- patient referral practices of physicians;
- ability to monitor patients adequately during and after treatment; and
- proximity and availability of clinical trial sites for prospective patients.

***Regulatory authorities may not approve our product candidates even if they meet safety and efficacy endpoints in clinical trials.***

We have discussions with and obtain guidance from regulatory authorities regarding certain aspects of our clinical development activities. These discussions are not binding commitments on the part of regulatory authorities. Under certain circumstances, regulatory authorities may revise or retract previous guidance during the course of our clinical activities or after the completion of our clinical trials. A regulatory authority may also disqualify a clinical trial in whole or in part from consideration in support of approval of a potential product for commercial sale or otherwise deny approval of that product. Prior to regulatory approval, a regulatory authority may elect to obtain advice from outside experts regarding scientific issues and/or marketing applications under a regulatory authority review. In the United States, these outside experts are convened through the FDA's Advisory Committee process, which would report to the FDA and make recommendations that may differ from the views of the FDA. The FDA is not bound by the recommendations of an Advisory Committee, but it typically follows such recommendations. In addition, should an Advisory Committee be convened, it would be expected to lengthen the time for obtaining regulatory approval, if such approval is obtained at all.

The FDA and other foreign regulatory agencies can delay, limit or deny marketing approval for many reasons, including:

- a product candidate may not be considered safe or effective;
- our manufacturing processes or facilities may not meet the applicable requirements; and
- changes in their approval policies or adoption of new regulations may require additional work on our part.

Any delay in, or failure to receive or maintain, approval for any of our product candidates could prevent us from ever generating meaningful revenues or achieving profitability in future years.

Our product candidates may not be approved even if they achieve their endpoints in clinical trials. Regulatory agencies, including the FDA, or their advisors may disagree with our trial design and our interpretations of data from preclinical studies and clinical trials. Regulatory agencies may change requirements for approval even after a clinical trial design has been approved. Regulatory agencies also may approve a product candidate for fewer or more limited indications than requested or may grant approval subject to the performance of post-marketing studies. In addition, regulatory agencies may not approve the labeling claims that are necessary or desirable for the successful commercialization of our product candidates.

***Under the Merck Agreement we will receive limited revenues, if any, from any future sales of our Ebola vaccine product.***

Under the Merck Agreement, we are only entitled to certain royalty and other payments and we will receive limited revenues, if any, even if Merck is successful in commercializing our Ebola vaccine in other countries. We believe that the market for the vaccine will be limited primarily to areas in the developing world that are excluded from royalty payment or where the vaccine is donated or sold at low or no margin and therefore we do not expect to receive material royalty payments from Merck in the foreseeable future.

Public perception of vaccine safety issues, including adoption of novel vaccines based upon vesicular stomatitis virus, may adversely influence willingness of physicians to prescribe, and of patients to receive, novel vaccines. For example, our Ebola vaccine product is currently approved for the prevention of, and may later be developed for the treatment of patients infected with, Ebola, and public aversion to vaccines for Ebola or vaccines in general may adversely influence any future clinical trials of this product or its commercial success.

A number of factors may adversely affect commercial sales. Lack of familiarity with the viral vaccine and any adverse events associated with vaccination may adversely affect physician and patient perception and uptake of the product. Furthermore, there are no assurances that the vaccine will be approved for inclusion in government stockpile programs, which may be material to the commercial success of the product candidate, either in the United States or abroad. If our Ebola vaccine product is successfully commercialized and sold by Merck, we will receive limited revenues under the Merck Agreement. Finally, in certain cases, our obligations to pay royalties to PHAC may exceed the royalties we receive from Merck.

***We may be required to suspend, repeat or terminate our clinical trials if they are not conducted in accordance with regulatory requirements, the results are negative or inconclusive or the trials are not well designed.***

Clinical trials must be conducted in accordance with the FDA's GCP requirements, or other applicable foreign government guidelines and are subject to oversight by the FDA, other foreign governmental agencies and Institutional Review Boards at the medical institutions where the clinical trials are conducted. In addition, clinical trials must be conducted with product

candidates produced under cGMP requirements and may require large numbers of test subjects. Clinical trials may be suspended by the FDA, other foreign governmental agencies, or us for various reasons, including:

- deficiencies in the conduct of the clinical trials, including failure to conduct the clinical trial in accordance with regulatory requirements or clinical protocols;
- inspection of the clinical trial operations or trial sites by the FDA or other regulatory authorities resulting in the imposition of a clinical hold;
- the product candidate may have unforeseen adverse side effects;
- the time required to determine whether the product candidate is effective may be longer than expected;
- fatalities or other adverse events arising during a clinical trial due to medical problems that may not be related to clinical trial treatments;
- failure to demonstrate a benefit from using a drug;
- the quality or stability of the product candidate may fall below acceptable standards; or
- insufficient quantities of the product candidate to complete the trials.

In addition, changes in regulatory requirements and guidance may occur and we may need to amend clinical trial protocols to reflect these changes. Amendments may require us to resubmit our clinical trial protocols to Institutional Review Boards for reexamination, which may impact the costs, timing or successful completion of a clinical trial. Due to these and other factors including indoximod, NLG802, NLG207, NLG919, and other product candidates could take significantly longer to gain regulatory approval than we expect or we may never gain approval for additional indications, which could reduce our revenue by delaying or terminating their commercialization.

***Some of our product candidates have been studied, or in the future may be studied, in clinical trials co-sponsored by organizations or agencies other than us, or in investigator-initiated clinical trials, which means we have little control over the conduct of such trials.***

We have in the past and currently supply indoximod in support of Phase 2 investigator-initiated clinical trials, and we provided clinical supply of dorgemeltucel-L in support of a Phase 2 investigator-initiated clinical trial. Our Ebola vaccine product candidate was studied in clinical trials in West Africa. We may continue to supply and otherwise support similar trials in the future. However, because we are not the sponsors of these trials, we do not control the protocols, administration or conduct of these trials, including follow-up with patients and ongoing collection of data after treatment, and, as a result, are subject to risks associated with the way these types of trials are conducted, in particular should any problems arise. These risks include difficulties or delays in communicating with investigators or administrators, procedural delays and other timing issues and difficulties or differences in interpreting data.

***If we cannot demonstrate the safety of our product candidates in preclinical and/or other non-clinical studies, we will not be able to initiate or continue clinical trials or obtain approval for our product candidates.***

In order to move a product candidate not yet being tested in humans into a clinical trial, we must first demonstrate in preclinical testing that the product candidate is safe. Furthermore, in order to obtain approval, we must also demonstrate safety in various preclinical and non-clinical tests. We may not have conducted or may not conduct in the future the types of preclinical and other non-clinical testing ultimately required by regulatory authorities, or future preclinical tests may indicate that our product candidates are not safe for use in humans. Preclinical testing is expensive, can take many years and can have an uncertain outcome. In addition, success in initial preclinical testing does not ensure that later preclinical testing will be successful. We may experience numerous unforeseen events during, or as a result of, the preclinical testing process, which could delay or prevent our ability to develop or commercialize our product candidates, including:

- our preclinical testing may produce inconclusive or negative safety results, which may require us to conduct additional preclinical testing or to abandon product candidates that we believed to be promising;
- our product candidates may have unfavorable pharmacology, toxicology or carcinogenicity;
- our product candidates may cause undesirable side effects; and
- the FDA or other regulatory authorities may determine that additional safety testing is required.

Any such events would increase our costs and could delay or prevent our ability to commercialize our product candidates, which could adversely impact our business, financial condition and results of operations.

***Even if ultimately approved, indoximod, NLG802, NLG207, NLG919, any other potential product candidate or the Ebola vaccine we or our collaborators may commercialize and market may be later withdrawn from the market or subject to promotional limitations.***

We or our collaborators may not be able to obtain the labeling claims necessary or desirable for the promotion of any potential future products. We or our collaborators may also be required to undertake post-marketing clinical trials. If the results of such post-marketing studies are not satisfactory, the FDA or a comparable agency in a foreign country may withdraw marketing authorization or may condition continued marketing on commitments from us or our collaborators that may be expensive and/or time-consuming to fulfill. In addition, if we or others identify adverse side effects after any of our potential products are on the market, or if manufacturing problems occur, regulatory approval may be withdrawn and reformulation of our potential products, additional clinical trials, changes in labeling of our potential products and/or additional marketing applications may be required. Any reformulation or labeling changes may limit the marketability of our potential products.

***We will need to develop or acquire additional capabilities in order to commercialize any product candidates that obtain FDA approval, and we may encounter unexpected costs or difficulties in doing so.***

We will need to acquire additional capabilities and effectively manage our operations and facilities to successfully pursue and complete future research, development and commercialization efforts. Currently, we have limited experience in preparing applications for marketing approval, commercial-scale manufacturing, managing large-scale information technology systems or managing a large-scale distribution system. We will need to add personnel and expand our capabilities, which may strain our existing managerial, operational, regulatory compliance, financial and other resources.

To do this effectively, we must:

- train, manage and motivate a growing employee base;
- accurately forecast demand for our products; and
- expand existing operational, financial and management information systems.

We will need to increase our manufacturing capacity, which may include negotiating and entering into additional third-party agreements to meet our commercial manufacturing requirements.

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

We do not have a sales organization and have no experience in the sales and distribution of pharmaceutical products. There are risks involved with establishing our own sales capabilities and increasing our marketing capabilities, as well as entering into arrangements with third parties to perform these services. Developing an internal sales force is expensive and time consuming and could delay any product launch. On the other hand, if we enter into arrangements with third parties to perform sales, marketing and distribution services, our product revenues or the profitability of these product revenues to us could potentially be lower than if we market and sell these products ourselves.

We entered into the Merck Agreement in November 2014 for the research, development, manufacture and distribution of our Ebola vaccine product candidate. Even if our Ebola vaccine product candidate is approved by regulators for marketing and sale, Merck may be unsuccessful in its efforts to commercialize our Ebola vaccine product candidate, respectively, or may devote fewer resources to such efforts than we would consider optimal.

We may establish our own specialty sales force and/or engage other biopharmaceutical or other healthcare companies with established sales, marketing and distribution capabilities to sell, market and distribute any future products. We may not be able to establish a specialty sales force or establish sales, marketing or distribution relationships on acceptable terms. Factors that may inhibit our efforts to commercialize any future products without strategic collaborators or licensees include:

- our inability to recruit and retain adequate numbers of effective sales and marketing personnel;
- the inability of sales personnel to obtain access to an adequate number of physicians to educate them about the attributes of any future products;
- 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; and
- unforeseen costs and expenses associated with creating an independent sales and marketing organization.

Because the establishment of sales, marketing and distribution capabilities depends on the progress toward commercialization of our product candidates, and because of the numerous risks and uncertainties involved with establishing those capabilities, we are unable to predict when, if ever, we will establish our own sales, marketing and distribution capabilities. If we are not able to collaborate with third parties and are unsuccessful in recruiting sales, marketing and distribution personnel or in building the necessary infrastructure, we will have difficulty commercializing our product candidates, which would adversely affect our business and financial condition.

***Failure to attract and retain key personnel could impede our ability to develop our products and to obtain new collaborations or other sources of funding.***

Because of the specialized scientific nature of our business, our success is highly dependent upon our ability to attract and retain qualified scientific and technical personnel, consultants and advisors. We are highly dependent on the principal members of our scientific and management staff. Effective August 3, 2019 Charles J. Link, Jr., our founder and former Chief Executive Officer, Chief Scientific Officer and Chairman of the Board, retired from his posts as Chairman, Chief Executive Officer and Chief Scientific Officer and as a member of the Board of Directors of the Company. Effective September 27, 2019, Dr. Nicholas Vahanian retired from his posts as President and a member of the Board. These changes, or the long-term loss of services of any other key executives, might significantly delay or prevent the achievement of our research, development, and business objectives. We do not maintain key-man life insurance with respect to any of our employees, nor do we intend to secure such insurance.

We may need to recruit additional personnel in the future in order to achieve our planned operations. We also rely on consultants and advisors to assist in formulating our research and development strategy and adhering to complex regulatory requirements. We face competition for qualified individuals from numerous pharmaceutical and biotechnology companies, universities and other research institutions. There can be no assurance that we will be able to attract and retain such individuals on acceptable terms, if at all. Additionally, our main office is located in Iowa, which may make attracting and retaining qualified scientific and technical personnel from outside of Iowa difficult. The failure to attract and retain qualified personnel, consultants and advisors could have a material adverse effect on our business, financial condition and results of operations.

***Our workforce reduction may cause undesirable consequences and our results of operations may be harmed.***

On September 30, 2019, we commenced a restructuring plan to reduce our headcount to conserve resources. Under the restructuring plan, we reduced our workforce by 28 employees (approximately 60%), including several members of management. This workforce reduction may yield unintended consequences, such as attrition beyond our intended reduction in workforce and reduced employee morale, which may cause our employees who were not affected by the reduction in workforce to seek alternate employment. Additional attrition could impede our ability to meet our operational goals. In addition, as a result of the reductions in our workforce, we may face an increased risk of employment litigation. Furthermore, employees whose positions were eliminated or those who determine to seek alternate employment may seek employment with our competitors. We cannot assure you that we will be able to realize the cost savings and other anticipated benefits from our previous or any future reduction plans.

**Risks Related to Manufacturing Activities**

***We rely on third-party manufacturers to produce our preclinical and clinical product candidate supplies and we intend to rely on third parties to produce commercial supplies of any product candidates that may be approved in the future. Any failure by a third-party manufacturer to produce supplies for us may delay or impair our ability to complete our clinical trials or commercialize our product candidates.***

We do not possess all of the capabilities to fully commercialize any of our product candidates on our own. If we are unable to arrange for third-party manufacturing sources or to do so on commercially reasonable terms, we may not be able to complete development of such product candidates or market them. In addition, we currently rely on third party manufacturers for our supply of indoximod, NLG802, and NLG919 for preclinical and clinical studies. Problems with any of our facilities or processes, or our contract manufacturers' facilities or processes, could prevent or delay the production of adequate supplies of indoximod, NLG802, NLG919, or other finished products.

Any prolonged delay or interruption in the operations of our current or future contract manufacturers' facilities could result in cancellation of shipments, loss of components in the process of being manufactured or a shortfall in the availability of a product. A number of factors could cause interruptions, including the inability of a supplier to provide raw materials, equipment malfunctions or failures, damage to a facility due to natural disasters, changes in international or U.S. regulatory requirements or standards that require modifications to our manufacturing processes, action by regulatory authorities or by us that results in the halting or slowdown of production of components or finished product due to regulatory issues, a contract manufacturer

going out of business or failing to produce product as contractually required or other similar factors. Because manufacturing processes are highly complex and are subject to a lengthy regulatory approval process, alternative qualified production capacity and sufficiently trained or qualified personnel may not be available on a timely or cost-effective basis or at all. Difficulties or delays in our contract manufacturers' production of product candidates could delay our clinical trials, increase our costs, damage our reputation and cause us to lose revenue and market share if we are unable to meet market demand for any products that are approved for sale on a timely basis.

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 assurance, the possibility of breach of the manufacturing agreement by the third party because of factors beyond our control, failure of the third party to accept orders for supply of drug substance or drug product and the possibility of termination or nonrenewal of the agreement by the third-party based on its own business priorities and at a time that is costly or damaging to us. In addition, the FDA and other regulatory authorities require that our product candidates be manufactured according to cGMP and similar foreign standards. Any failure by our third-party manufacturers to comply with cGMP or failure to scale-up manufacturing processes as needed, including 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. In addition, such failure could be the basis for action by the FDA to withdraw approvals for product candidates that may have been granted to us and for other regulatory action, including recall or seizure, fines, imposition of operating restrictions, total or partial suspension of production or injunctions.

We rely on our manufacturers to purchase from third-party suppliers the materials necessary to produce our product candidates for our clinical studies. There are a small number of suppliers for certain capital equipment and raw materials that are used to manufacture our product candidates. Such suppliers may not sell this capital equipment or these raw materials to our manufacturers at the times we need them or on commercially reasonable terms. We do not have any control over the process or timing of the acquisition of this capital equipment or these raw materials by our manufacturers. Moreover, we currently do not have any agreements for the commercial production of these raw materials. Any significant delay in the supply of a product candidate or the raw material components thereof for an ongoing clinical trial due to the need to replace a third-party manufacturer could considerably delay completion of our clinical studies, product testing and potential regulatory approval of our product candidates. If our manufacturers or we are unable to purchase these raw materials after regulatory approval has been obtained for our product candidates, the commercial launch of our product candidates would be delayed or there would be a shortage in supply, which would impair our ability to generate revenues from the sale of our product candidates.

Because of the complex nature of many of our early-stage compounds and product candidates, our manufacturers may not be able to manufacture such compounds and product candidates at a cost or in quantities or in a timely manner necessary to develop and commercialize related products. If we successfully commercialize any of our product candidates, we may be required to establish or access large-scale commercial manufacturing capabilities. In addition, as our drug development pipeline increases and matures, we will have a greater need for clinical trial and commercial manufacturing capacity. To meet our projected needs for commercial manufacturing in the event that one or more of our product candidates gains marketing approval, third parties with whom we currently work will need to increase their scale of production or we will need to secure alternate suppliers.

Furthermore, we do not currently have experience with the management of relationships related to commercial-scale contract manufacturing, and we may incur substantial costs to develop the capability to negotiate and enter into relationships with third-party contract manufacturers.

***We and our contract manufacturers are subject to significant regulation with respect to manufacturing of our products.***

All entities involved in the preparation of a therapeutic drug for clinical trials or commercial sale, including our Company, our existing contract manufacturers and those we may engage in the future, and Merck in its capacity as our licensee, are subject to extensive regulation. Components of a finished therapeutic product approved for commercial sale or used in late-stage clinical trials must be manufactured in accordance with cGMP regulations. These regulations govern manufacturing processes and procedures (including record keeping) and the implementation and operation of quality systems to control and assure the quality of investigational products and products approved for sale. Our facilities and quality systems and the facilities and quality systems of some or all of our third party contractors must pass a pre-approval inspection for compliance with the applicable regulations as a condition of regulatory approval of any of our product candidates. In addition, the regulatory authorities may, at any time, audit or inspect a manufacturing facility involved with the preparation of any of our product candidates or the associated quality systems for compliance with the regulations applicable to the activities being conducted. If any such inspection or audit identifies a failure to comply with applicable regulations or if a violation of our product specifications or applicable regulations occurs independent of such an inspection or audit, we or the relevant regulatory authority may require remedial measures that may be costly and/or time-consuming for us or a third party to implement and that may include the

temporary or permanent suspension of a clinical trial or commercial sales or the temporary or permanent closure of a facility. Any such remedial measures imposed upon us or third parties with whom we contract could materially harm our business. In addition, to the extent that we rely on foreign contract manufacturers, as we do currently for NLG802, we are or will be subject to additional risks including the need to comply with export and import regulations.

If our current or future contract manufacturers are not in compliance with regulatory requirements at any stage, including post-marketing approval, we may be fined, forced to remove a product from the market and/or experience other adverse consequences, including delays, which could materially harm our business.

***Our facility is located in areas where floods and tornados are known to occur, and the occurrence of a flood, tornado or other catastrophic disaster could damage our facilities and equipment, which could cause us to curtail or cease operations.***

Our primary facility is located in Ames, Iowa, which is susceptible to floods and tornados, and our facility is therefore vulnerable to damage or disruption from floods and tornados. We are also vulnerable to damage from other types of disasters, such as power loss, fire and similar events. If any disaster were to occur, our ability to operate our business could be seriously impaired. We currently carry business insurance (real, personal and business income) of approximately \$14.4 million in the aggregate, but this policy does not cover disasters such as floods and earthquakes. We may not have adequate insurance to cover our losses resulting from disasters or other similar significant business interruptions, and we do not plan to purchase additional insurance to cover such losses due to the cost of obtaining such coverage. Any significant losses that are not recoverable under our insurance policies could seriously impair our business and financial condition.

***Significant disruptions of information technology systems or breaches of data security could adversely affect our business.***

We are increasingly dependent on information technology systems and infrastructure, including mobile technologies, to operate our business. In the ordinary course of our business, we collect, store and transmit large amounts of confidential information, including intellectual property, proprietary business information and personal information. It is critical that we do so in a secure manner to maintain the confidentiality and integrity of such confidential information. We have also outsourced elements of our information technology infrastructure, and as a result we manage a number of third-party vendors who may or could have access to our confidential information. The size and complexity of our information technology systems, and those of third-party vendors with whom we contract, make such systems potentially vulnerable to breakdown, malicious intrusion, security breaches and other cyber-attacks. In addition, the prevalent use of mobile devices that access confidential information increases the risk of data security breaches, which could lead to the loss of confidential information, trade secrets or other intellectual property. While we have implemented security measures to protect our data security and information technology systems, such measures may not prevent the adverse effect of such events. Significant disruptions of our information technology systems or breaches of data security could adversely affect our business.

## **Risks Related to Regulation of Our Industry**

***The industry within which we operate and our business are subject to extensive regulation, which is costly and time-consuming and which may subject us to unanticipated delays.***

The research, development, testing, manufacturing, labeling, packaging, marketing, distribution, promotion and advertising of biologic and pharmaceutical products such as our product candidates are subject to extensive regulation by governmental regulatory authorities in the United States and other countries. The drug development and approval process is generally lengthy, expensive and subject to unanticipated delays. Data obtained from preclinical and clinical testing are subject to varying interpretations that could delay, limit or prevent regulatory approval. In addition, delays or rejections may be encountered based upon changes in regulatory policy for product approval during the period of development and regulatory review of each submitted application for approval. To obtain approval for a product candidate, we must demonstrate to the satisfaction of the regulatory authorities that the product candidate is safe and effective in the case of a small-molecule pharmaceutical product, or is safe, pure and potent in the case of a biologic, which typically takes several years or more depending upon the type, complexity and novelty of the product and requires the expenditure of substantial resources.

There can be no assurance that we will not encounter problems in clinical trials that would cause us or the regulatory authorities to delay or suspend clinical trials. Any such delay or suspension could have a material adverse effect on our business, financial condition and results of operations. There can be no assurance that we will not encounter problems in clinical trials that would cause us or the regulatory authorities to delay or suspend clinical trials. Any such delay or suspension could have a material adverse effect on our business, financial condition and results of operations. There can be no assurance that clinical trials for any of our product candidates currently under development will be completed successfully or within any specified time period, if at all. Further, there can also be no assurance that such testing will show any product to be safe, pure, potent or effective. We

cannot predict when, if ever, we might submit for regulatory review our product candidates currently under development. In addition, regardless of how much time and resources we devote to the development of a product candidate, there can be no assurance that regulatory approval will be obtained for that product candidate.

Even if such regulatory approval is obtained, we, our products and any contract manufacturers or commercial collaborators of ours will be subject to continual regulatory review in both the United States and other countries. Later discovery of previously unknown problems with regard to a product, distributor or manufacturer may result in restrictions, including withdrawal of the product from the market and/or disqualification or decertification of the distributor or manufacturer. If we, our product candidates or the manufacturing facilities for our product candidates fail to comply with regulatory requirements of the FDA and/or non-U.S. regulatory authorities, we could be subject to administrative or judicially imposed sanctions, including:

- warning letters;
- civil or criminal penalties;
- injunctions;
- suspension of or withdrawal of regulatory approval;
- total or partial suspension of any ongoing clinical trials or of production;
- voluntary or mandatory product recalls and publicity requirements;
- refusal to approve pending applications for marketing approval of new products or supplements to approved applications filed by us;
- restrictions on operations, including costly new manufacturing requirements; or
- seizure or detention of our products or import bans.

The FDA and comparable agencies in foreign countries impose substantial requirements on the introduction of new biologic and pharmaceutical products through lengthy and detailed preclinical and clinical testing procedures, sampling activities and other costly and time-consuming compliance procedures. Clinical trials are vigorously regulated and must meet requirements for FDA review and oversight and requirements under GCP guidelines. A new drug may not be marketed in the United States until the FDA has approved it. There can be no assurance that we will not encounter delays or rejections or that the FDA will not make policy changes during the period of product development and FDA regulatory review of each submitted BLA and new drug application (NDA). A delay in obtaining, or failure to obtain, such approvals would have a material adverse effect on our business, financial condition and results of operations. Even if regulatory approval were obtained, it would be limited as to the indicated uses for which the product may be promoted or marketed. A marketed product, its manufacturer and the facilities in which it is manufactured are subject to continual review and periodic inspections. If marketing approval is granted, we would be required to comply with FDA requirements for manufacturing, labeling, advertising, record-keeping and reporting of adverse experiences and other information. Drugs may be promoted only for the approved indications and in accordance with the provisions of the approved label, although physicians, in the practice of medicine, may prescribe approved drugs for unapproved indications. Companies may also share truthful and not misleading information that is otherwise consistent with the labeling. In addition, we would be required to continue to comply with federal and state anti-kickback and other healthcare fraud and abuse laws that pertain to the marketing of pharmaceuticals, among other things. Failure to comply with regulatory requirements and other factors could subject us to regulatory or judicial enforcement actions, including product recalls or seizures, injunctions, withdrawal of the product from the market, civil penalties, criminal prosecution, refusals to approve new products and withdrawals of existing approvals, as well as enhanced product liability exposure, any of which could have a material adverse effect on our business, financial condition and results of operations. Sales of our products outside the United States will be subject to foreign regulatory requirements governing clinical trials, marketing approval, manufacturing and pricing. Noncompliance with these requirements could result in enforcement actions or penalties or could delay the introduction of our products in certain countries.

The requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement outside the United States vary greatly from country to country. The time required to obtain approvals outside the United States may differ from that required to obtain FDA approval. We may not obtain foreign regulatory approvals on a timely basis, or at all. Approval by the FDA does not ensure approval by regulatory authorities in other countries, and approval by one foreign regulatory authority does not ensure approval by regulatory authorities in other countries or by the FDA. Foreign regulatory authorities could also require additional testing. Failure to comply with these regulatory requirements or obtain required approvals could impair our ability to develop foreign markets for our products and may have a material adverse effect on our results of operations and financial condition.

We are also subject to laws generally applicable to businesses including, but not limited to, federal, state and local regulations relating to wage and hour matters, employee classification, mandatory healthcare benefits, unlawful workplace discrimination and whistleblowing. Any actual or alleged failure to comply with any regulation applicable to our business or any whistleblowing claim, even if without merit, could result in costly litigation or regulatory action or otherwise harm our business, results of operations, financial condition, cash flow and future prospects.

***The availability of coverage and amount of reimbursement for our product candidates, if approved, and the manner in which government and private payers may reimburse for our potential products, are uncertain.***

In both the United States and foreign markets, sales of our proposed products will depend in part on the availability of coverage and reimbursement from third-party payers such as government health administration authorities, private health insurers and other organizations. In addition, the process for determining whether a third party payer will provide coverage for a pharmaceutical typically is separate from the process for setting the price of such product or for establishing the reimbursement rate that the payer will pay for the product once coverage is approved. Decisions regarding the extent of coverage and amount of reimbursement to be provided are made on a payor-by-payor basis. Third-party payors are increasingly challenging the price and cost-effectiveness of medical products and services.

Significant uncertainty exists as to the reimbursement status of newly approved healthcare products. There can be no assurance that our proposed products will be considered cost-effective or that adequate third-party reimbursement will be available to enable us to maintain price levels sufficient to realize an appropriate return on our investment in product development.

Our future levels of revenues and profitability may be affected by the continuing efforts of governmental and third-party payers to contain or reduce the costs of healthcare. We cannot predict the effect that private sector or governmental health care reforms may have on our business, and there can be no assurance that any such reforms will not have a material adverse effect on our business, financial condition and results of operations. Legislation and regulations affecting the pricing of pharmaceuticals may change before any of our proposed products are approved for marketing. Adoption of such legislation could further limit reimbursement for medical products and services. As a result, we may elect not to market future products in certain markets. Moreover, while we are in clinical trials, we will not be reimbursed for any of our materials used during the clinical trials, however, certain services rendered to clinical trial participants may be reimbursable by third-party payors for standard of care treatment if not otherwise reimbursed under the applicable clinical trial study budget.

***The biopharmaceutical industry is subject to significant regulation and oversight in the United States, in addition to approval of products for sale and marketing; our failure to comply with these laws could harm our results of operations and financial condition.***

In addition to FDA restrictions on marketing of biopharmaceutical products, our operations may be directly, or indirectly through our relationships with healthcare providers, customers and third-party payers, subject to various federal and state fraud and abuse laws, including, without limitation, the federal Anti-Kickback Statute. These laws may impact, among other things, our proposed sales, and education programs, and these laws have been applied to restrict certain marketing practices in the biopharmaceutical industry. In addition, we may be subject to patient privacy regulation by both the U.S. federal government and the states in which we conduct our business. The laws that may affect our ability to operate include, among others, the following:

- The federal Anti-Kickback Statute prohibits, among other things, knowingly and willfully offering, paying, soliciting, or receiving remuneration to induce or in return for purchasing, leasing, ordering, or arranging for the purchase, lease, or order of any health care item or service reimbursable under Medicare, Medicaid, or other federally financed healthcare programs. This statute has been interpreted to apply to arrangements between pharmaceutical manufacturers on the one hand and prescribers, purchasers and formulary managers on the other. Although there are a number of statutory exceptions and regulatory safe harbors protecting certain common activities from prosecution, the exceptions and safe harbors are drawn narrowly. Practices that involve remuneration that may be alleged to be intended to induce prescribing, purchases or recommendations may be subject to scrutiny if they do not qualify for an exception or safe harbor. Our practices may not in all cases meet all of the criteria for safe harbor protection from anti-kickback liability. In addition, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation. Moreover, 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 civil False Claims Act.
- The federal civil False Claims Act prohibits any person or entity from knowingly presenting, or causing to be presented, to the federal government a claim for payment or approval that is false or fraudulent or from

knowingly making a false statement to avoid, decrease or conceal an obligation to pay money to the federal government. Several pharmaceutical and other health-care companies have been prosecuted under these laws for allegedly providing free product to customers with the expectation that the customers would bill federal programs for the product. Other companies have been prosecuted for causing false claims to be submitted because of off-label promotion. Private parties may initiate qui tam whistleblower lawsuits against any person or entity under the federal civil False Claims Act in the name of the government and share in the proceeds of the lawsuit.

- HIPAA imposes criminal and civil liability for knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program, or knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false statement in connection with the delivery of, or payment for, healthcare benefits, items or services; similar to the federal Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation.
- HIPAA, as amended by HITECH, and their implementing regulations imposes certain obligations, including mandatory contractual terms, with respect to safeguarding the privacy, security and transmission of individually identifiable health information without appropriate authorization on covered entities, such as health plans, healthcare clearinghouses and healthcare providers as well as their business associates that perform certain services involving the use or disclosure of individually identifiable health information.
- The FDCA prohibits, among other things, the adulteration or misbranding of drugs and medical devices.
- The federal Physician Payments Sunshine Act, and its implementing regulations require manufacturers of drugs, devices, biologics and medical supplies that are reimbursable under Medicare, Medicaid, or the Children's Health Insurance Program to report annually to CMS, information related to payments and other transfers of value to physicians, certain other healthcare providers, and teaching hospitals, as well as ownership and investment interests held by such healthcare providers and their immediate family members.
- Analogous state laws and regulations include: state anti-kickback and false claims laws, which may apply to our business practices, including but not limited to, research, distribution, sales and marketing arrangements and claims involving healthcare items or services reimbursed by any third-party payer, including private insurers; state laws that require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the U.S. federal government, or otherwise restrict payments that may be made to healthcare providers and other potential referral sources; state laws and regulations that require drug manufacturers to file reports relating to pricing and marketing information and that require tracking gifts and other remuneration and items of value provided to healthcare professionals and entities; state and local laws that require the registration of pharmaceutical sales representatives; and state laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts.

Ensuring that our future business arrangements with third parties comply with applicable healthcare laws and regulations could involve substantial costs. If our operations are found to be in violation of any of the laws described above or any other governmental laws and regulations that may apply to us, we may be subject to significant penalties, including civil, criminal and administrative penalties, damages, fines, disgorgement, imprisonment, exclusion from government-funded healthcare programs, such as Medicare and Medicaid, additional reporting obligations and oversight if we become subject to a corporate integrity agreement or other agreement to resolve allegations of non-compliance with these laws, and the curtailment or restructuring of our operations. It is possible that some of our business activities could be subject to challenge under one or more of these laws, which could have a material adverse effect on our business, financial condition and results of operations.

We cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative or executive action, either in the United States or abroad. For example, certain policies of the Trump administration may impact our business and industry. Namely, the Trump administration has taken several executive actions, including the issuance of a number of Executive Orders, that could impose significant burdens on, or otherwise materially delay, FDA's ability to engage in routine regulatory and oversight activities such as implementing statutes through rulemaking, issuance of guidance, and review and approval of marketing applications. Notably, on January 30, 2017, President Trump issued an Executive Order, applicable to all executive agencies, including the FDA, that required that for each notice of proposed rulemaking or final regulation to be issued in fiscal year 2017, the agency shall identify at least two existing regulations to be repealed, unless prohibited by law. These requirements are referred to as the "two-for-one" provisions. This Executive Order included a budget neutrality provision that required the total incremental cost of all new regulations in the

2017 fiscal year, including repealed regulations, to be no greater than zero, except in limited circumstances. For fiscal years 2018 and beyond, the Executive Order requires agencies to identify regulations that can be repealed to offset any incremental cost of a new regulation and approximate the total costs or savings associated with each new regulation or repealed regulation. In interim guidance issued by the Office of Information and Regulatory Affairs within the United States Office of Management and Budget on February 2, 2017, the administration indicates that the “two-for-one” provisions may apply not only to agency regulations, but also to significant agency guidance documents. Further, on February 24, 2017, President Trump issued an Executive Order requiring each agency to designate a regulatory reform officer and create a regulatory reform task force to evaluate existing regulations and make recommendations regarding their repeal, replacement, or modification. It is difficult to predict how these requirements will continue to be enforced, the extent to which they will continue to impact the FDA’s ability to exercise its regulatory authority, and the negative impact they may have on our business.

***Healthcare legislative reform measures may have a material adverse effect on our business and results of operations.***

The U.S. and some foreign jurisdictions are considering or have enacted a number of additional legislative and regulatory proposals to change the healthcare system in ways that could affect our ability to sell our products profitably. Among policy makers and payors in the United States 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. For example, in the United States, the pharmaceutical industry has been affected by the passage of the ACA, which, among other things, imposed new fees on entities that manufacture or import certain branded prescription drugs and expanded pharmaceutical manufacturer obligations to provide discounts and rebates to certain government programs. There remain judicial and congressional challenges to certain aspects of the ACA, as well as recent efforts by the Trump administration to repeal or replace certain aspects of the ACA. Since January 2017, President Trump has signed two Executive Orders and other directives designed to delay the implementation of certain provisions of the ACA or otherwise circumvent some of the requirements for health insurance mandated by the ACA. Concurrently, Congress has considered legislation that would repeal or repeal and replace all or part of the ACA. While Congress has not passed comprehensive repeal legislation, several bills affecting the implementation of certain taxes under the ACA have been signed into law. The Tax Act includes a provision repealing, effective January 1, 2019, the tax-based shared responsibility payment imposed by the ACA on certain individuals who fail to maintain qualifying health coverage for all or part of a year that is commonly referred to as the “individual mandate.” Additionally, the 2020 federal spending package permanently eliminated, effective January 1, 2020, the ACA-mandated “Cadillac” tax on high-cost employer-sponsored health coverage and medical device tax and, effective January 1, 2021, also eliminates the health insurer tax. Further, the Bipartisan Budget Act of 2018 (the BBA) among other things, amends the ACA, effective January 1, 2019, to increase from 50 percent to 70 percent the point-of-sale discount that is owed by pharmaceutical manufacturers who participate in Medicare Part D and to close the coverage gap in most Medicare drug plans, commonly referred to as the “donut hole.” In December 2018, CMS published a new final rule permitting further collections and payments to and from certain ACA qualified health plans and health insurance issuers under the ACA risk adjustment program in response to the outcome of federal district court litigation regarding the method CMS uses to determine this risk adjustment. On December 14, 2018, a Texas U.S. District Court Judge ruled that the ACA is unconstitutional in its entirety because the “individual mandate” was repealed by Congress as part of the Tax Act. Additionally, 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 back to the District Court to determine whether the remaining provisions of the ACA are invalid as well. It is unclear how this decision, future decisions, subsequent appeals, and other efforts to repeal and replace the ACA will impact the ACA and our business.

In addition, there has been particular and increasing legislative and enforcement interest in the United States with respect to specialty drug pricing practices in recent years, particularly with respect to drugs that have been subject to relatively large price increases over relatively short time periods. There have been several recent U.S. Congressional inquiries and proposed and enacted legislation designed to, among other things, bring more transparency to drug pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for drugs. The Trump administration’s budget proposals for fiscal years 2019 and 2020 contain further drug price control measures that could be enacted during the budget process or in other future legislation, including, for example, measures to permit Medicare Part D plans to negotiate the price of certain drugs under Medicare Part B, to allow some states to negotiate drug prices under Medicaid, and to eliminate cost sharing for generic drugs for low-income patients. Additionally, the Trump administration released a “Blueprint” to lower drug prices and reduce out of pocket costs of drugs that contains additional proposals to increase manufacturer competition, increase the negotiating power of certain federal healthcare programs, incentivize manufacturers to lower the list price of their products and reduce the out of pocket costs of drug products paid by consumers. HHS has solicited feedback on some of these measures and, at the same time has implemented others under its existing authority. For example, in May 2019, CMS issued a final rule to allow Medicare Advantage Plans the option of using step therapy for Part B drugs beginning January 1, 2020. This final rule codified CMS’s policy change that was effective January 1, 2019. While some of these measures and other proposals will require additional authorization to become effective, Congress and the Trump

administration have each indicated that it will continue to seek new legislative and/or administrative measures to control drug costs. Any of these initiatives could harm our ability to generate revenues.

In the future, there will likely continue to be proposals relating to the reform of the U.S. healthcare system, some of which could further limit coverage and reimbursement of drug products, including our product candidates. Any reduction in reimbursement from Medicare or other government programs may result in a similar reduction in payments from private payors. 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.

Individual states are increasingly passing legislation and implementing regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access, and marketing cost disclosure and transparency measures and to encourage importation from other countries and bulk purchasing. Legally mandated price controls on payment amounts by third-party payers or other restrictions could harm our business, results of operations, financial condition and prospects. In addition, regional healthcare authorities and individual hospitals are increasingly using bidding procedures to determine which pharmaceutical products and suppliers will be included in their prescription drug and other healthcare programs. This could reduce ultimate demand for our products or put pressure on our product pricing, which could negatively affect our business, results of operations, financial condition and prospects.

Furthermore, regulatory authorities' assessment of the data and results required to demonstrate safety and efficacy can change over time and can be affected by many factors, such as the emergence of new information, including on other products, changing policies and agency funding, staffing and leadership. We cannot be sure whether future changes to the regulatory environment will be favorable or unfavorable to our business prospects. For example, average review times at the FDA for marketing approval applications have fluctuated over the last 10 years, and we cannot predict the review time for any of our submissions with any regulatory authorities. In addition, review times can be affected by a variety of factors, including budget and funding levels and statutory, regulatory and policy changes.

We cannot predict the likelihood, nature or extent of government regulation that may arise from future legislative or administrative action, either in the United States or abroad.

***We use hazardous materials in our business and must comply with environmental laws and regulations, which can be expensive.***

Our research and development involves the controlled use of hazardous materials, chemicals, various active microorganisms and volatile organic compounds, and we may incur significant costs as a result of the need to comply with numerous laws and regulations. We are subject to laws and regulations enforced by the FDA, the Drug Enforcement Agency, foreign health authorities and other regulatory requirements, including the Occupational Safety and Health Act, the Environmental Protection Act, the Toxic Substances Control Act, the Food, Drug and Cosmetic Act, the Resource Conservation and Recovery Act, and other current and potential federal, state, local and foreign laws and regulations governing the use, manufacture, storage, handling and disposal of our products, materials used to develop and manufacture our product candidates, and resulting waste products. Although we believe that our safety procedures for handling and disposing of such materials, and for killing any unused microorganisms before disposing of them, comply with the standards prescribed by state and federal regulations, the risk of accidental contamination or injury from these materials cannot be completely eliminated. In the event of such an accident, we could be held liable for any damages that result and any such liability could exceed our resources.

***Failure to comply with existing or future data protection laws and regulations related to privacy or data security could lead to government enforcement actions (which could include civil or criminal fines or penalties), private litigation, other liabilities, and/or adverse publicity. Compliance or the failure to comply with such laws could increase the costs of our products and services, could limit their use or adoption, and could otherwise negatively affect our operating results and business.***

Regulation of data processing is evolving, as federal, state, and foreign governments continue to adopt new, or modify existing, laws and regulations addressing data privacy and security, and the collection, processing, storage, transfer, and use of data. We and our partners may be subject to current, new, or modified federal, state, and foreign data protection laws and regulations (i.e., laws and regulations that address privacy and data security). These new or proposed laws and regulations are subject to differing interpretations and may be inconsistent among jurisdictions, and guidance on implementation and compliance practices are often updated or otherwise revised, which adds to the complexity of processing personal data. These and other requirements could require us or our partners to incur additional costs to achieve compliance, limit our competitiveness, necessitate the acceptance of more onerous obligations in our contracts, restrict our ability to use, store, transfer, and process

data, impact our or our partners' ability to process or use data in order to support the provision of our products or services, or affect our or our partners' ability to offer our products and services in certain locations.

In the United States, numerous federal and state laws and regulations, including state data breach notification laws, state health information privacy laws, and federal and state consumer protection laws (e.g., Section 5 of the Federal Trade Commission Act), that govern the collection, use, disclosure, and protection of health-related and other personal information could apply to our operations or the operations of our partners. In addition, we may obtain health information from third parties (including research institutions from which we obtain clinical trial data) that are subject to privacy and security requirements under HIPAA. Depending on the facts and circumstances, we could be subject to civil and/or criminal penalties including if we obtain, use, or disclose individually identifiable health information maintained by a HIPAA-covered entity in a manner that is not authorized or permitted by HIPAA.

International data protection laws, including, without limitation, the European Union Directive 95/46/EC (the Directive), and the European Union's General Data Protection Regulation (the GDPR) that took effect in May 2018, and member state data protection legislation, may also apply to health-related and other personal information obtained outside of the United States. These laws impose strict obligations on the ability to process health-related and other personal information of data subjects in the European Union, including in relation to use, collection, analysis and transfer of such personal information. These laws include several requirements relating to the consent of the individuals to whom the personal data relates, limitations on data processing, establishing a legal basis for processing, notification of data processing obligations or security incidents to appropriate data protection authorities or data subjects, the security and confidentiality of the personal data and various rights that data subjects may exercise.

The Directive and the GDPR prohibits, without an appropriate legal basis, the transfer of personal data to countries outside of the European Economic Area (EEA), such as the United States, which are not considered by the European Commission to provide an adequate level of data protection. Switzerland has adopted similar restrictions.

Although there are legal mechanisms to allow for the transfer of personal data from the EEA and Switzerland to the United States, uncertainty about compliance with European Union data protection laws remains. For example, ongoing legal challenges in Europe to the mechanisms allowing companies to transfer personal data from the EEA to the United States could result in further limitations on the ability to transfer personal data across borders, particularly if governments are unable or unwilling to reach new or maintain existing agreements that support cross-border data transfers, such as the European Union-U.S. and Swiss-U.S. Privacy Shield framework. Additionally, other countries have passed or are considering passing laws requiring local data residency.

Under the GDPR, regulators may impose substantial fines and penalties for non-compliance. Companies that violate the GDPR can face fines of up to the greater of 20 million Euros or 4% of their worldwide annual turnover (revenue). The GDPR has increased our responsibility and liability in relation to personal data that we process, requiring us to put in place additional mechanisms to ensure compliance with the GDPR and other EU and international data protection rules.

Failure to comply with U.S. and international data protection laws and regulations could result in government enforcement actions (which could include civil or criminal penalties), private litigation, and/or adverse publicity and could negatively affect our operating results and business. Moreover, patients about whom we or our partners obtain information, as well as the providers who share this information with us, may contractually limit our ability to use and disclose the information. Claims that we have violated individuals' privacy rights, failed to comply with data protection laws, or breached our contractual obligations related to security or privacy, even if we are not found liable, could be expensive and time-consuming to defend and could result in adverse publicity that could harm our business. Compliance with data protection laws may be time-consuming, require additional resources and could result in increased expenses, reduce overall demand for our products and services and make it more difficult to meet expectations of our commitments to customers or partners.

Any of these matters could materially adversely affect our business, financial condition, or operational results.

## Financial Risks

***We have a history of net losses. We incurred a net loss for the years ended December 31, 2017, 2018 and 2019 and expect to continue to incur net losses for the foreseeable future, and we may never achieve or maintain profitability in the future.***

We were profitable in the year ended December 31, 2014, primarily as a result of upfront payments under the Genentech Agreement and the Merck Agreement. We are not entitled to receive any additional upfront payments under these licensing or collaboration agreements. We do not expect any milestone or royalty payments under these or other agreements, if any, to be

sufficient to make us profitable in future years. We incurred a loss of \$43.0 million for the twelve months ended December 31, 2019. In the event we are able to monetize the PRV issued as a result of the approval by the FDA of the Ebola vaccine developed by our partner Merck in 2020 we may have revenues during the year ended December 31, 2020. However, we do not expect to achieve profitability in the foreseeable future.

Because of the numerous risks and uncertainties associated with biopharmaceutical product development and commercialization, we are unable to accurately predict the timing or amount of future expenses or when, or if, we will be able to achieve or maintain profitability. Currently, we have no products approved for commercial sale, and to date we have not generated any product revenue. We have financed our operations primarily through the sale of equity securities, government grants, economic development loans and capital lease and equipment financing. The size of our future net losses will depend, in part, on the rate of growth or contraction of our expenses and the level and rate of growth, if any, of our revenues. Our ability to achieve profitability in future years is dependent on our ability, alone or with others, to complete the development of our products successfully, obtain the required regulatory approvals, manufacture and market our proposed products successfully or have such products manufactured and marketed by others and gain market acceptance for such products. There can be no assurance as to whether or when we will achieve profitability.

We may require substantial additional capital in the future. If additional capital is not available, we will have to delay, reduce or cease future operations.

Development of our product candidates will require substantial additional funds to conduct research, development and clinical trials necessary to bring such product candidates to market and to establish manufacturing, marketing and distribution capabilities, either internally or through collaborations with third parties. Our future capital requirements will depend on many factors, including, among others:

- the scope, rate of progress, results and costs of our preclinical studies, clinical trials and other research and development activities;
- the scope, rate of progress and costs of our manufacturing development and commercial manufacturing activities;
- the cost, timing and outcomes of regulatory proceedings (including FDA review of any BLA or NDA we file);
- payments required with respect to development milestones we achieve under our in-licensing agreements;
- the costs involved in preparing, filing, prosecuting, maintaining and enforcing patent claims, including litigation costs and the outcome of such litigation;
- the costs associated with commercializing our product candidates, if they receive regulatory approval;
- the cost of manufacturing our product candidates and any products we commercialize;
- the cost and timing of developing our ability to establish sales and marketing capabilities;
- the potential requirement to repay our outstanding government provided loans;
- competing technological efforts and market developments;
- changes in our existing research relationships;
- our ability to establish and maintain strategic collaborations, licensing or other arrangements and the financial terms of such arrangements;
- the timing and receipt of revenues from existing or future products, if any; and
- payments received under any future strategic collaborations.

We anticipate that we will continue to generate significant losses in the future to the extent we incur expenses to complete our clinical trial programs for our product candidates, develop our pipeline and pursue regulatory approval of our product candidates. We believe that our existing cash and cash equivalents will allow us to fund our operating plan in the near and medium term. However, our operating plan may change as a result of factors currently unknown to us.

There can be no assurance that our revenue and expense forecasts will prove to be accurate, and any change in the foregoing assumptions could require us to obtain additional financing earlier than anticipated. There is a risk of delay or failure at any stage of developing a product candidate, and the time required and costs involved in successfully accomplishing our objectives

cannot be accurately predicted. Actual drug research and development costs could substantially exceed budgeted amounts, which could force us to delay, reduce the scope of or eliminate one or more of our research or development programs.

We are party to license agreements with various parties pursuant to which we have obtained licenses to certain patents, patent applications and other intellectual property related to our product candidates and product development efforts. We are obligated to make aggregate payments ranging from approximately \$250,000 to \$2.8 million under our license agreements (and in some cases, for each product candidate in such license) upon achievement of development and regulatory approval milestones specified in the applicable license. Upon approval of the Ebola vaccine, we paid a milestone payment of \$250,000 to PHAC in December 2019. The timing of our achievement of these events and corresponding milestone payments to our licensors is subject to factors relating to the clinical and regulatory development and commercialization of our product candidates, many of which are beyond our control. We may become obligated to make a milestone payment when we do not have the cash on hand to make such payment, which could require us to delay our clinical trials, curtail our operations, scale back our commercialization or marketing efforts or seek funds to meet these obligations on terms unfavorable to us.

We may never be able to generate a sufficient amount of product revenue to cover our expenses. Until we do, we expect to seek additional funding through public or private equity or debt financings, collaborative relationships, capital lease transactions or other available financing transactions. However, there can be no assurance that additional financing will be available on acceptable terms, if at all, and such financings could be dilutive to existing stockholders. Moreover, in the event that additional funds are obtained through arrangements with collaborators, such arrangements may require us to relinquish rights to certain of our technologies, product candidates or products that we would otherwise seek to develop or commercialize ourselves.

If adequate funds are not available, we may be required to delay, reduce the scope of or eliminate one or more of our research or development programs. Our failure to obtain adequate financing when needed and on acceptable terms would have a material adverse effect on our business, financial condition and results of operations.

***Even though we have received governmental support in the past, we may not continue to receive support at the same level or at all.***

We have received significant financial assistance, primarily in the form of forgivable loans, from state and local governments. We have also received significant financial assistance, primarily in the form of grants and contracts, from federal agencies to support our infectious disease research. There can be no assurance that we will continue to receive the same level of assistance from these or other government agencies, if at all.

Through our subsidiary, BPS, we have received funding from multiple government agencies for our Ebola vaccine product candidate development efforts. There is no guarantee that we will receive sufficient, or any, future grant funding to meet our obligations related to our Ebola vaccine development or that we or Merck will succeed in developing an Ebola vaccine. The termination of a United States government grant, contract or relationship as a result of our failure to satisfy any of our obligations under the grants or contracts would have a negative impact on our operations and harm our reputation and ability to procure government contracts. Additionally, there can be no assurance that we will secure comparable contracts with, or grants from, the United States government in the future.

***Changes in our effective income tax rate could adversely affect our results of operations in the future.***

For the twelve months ended December 31, 2019 we have no income tax benefit or expense. Our effective income tax rate, as well as our relative domestic and international tax liabilities, will depend in part on the allocation of any future income among different jurisdictions. In addition, various factors may have favorable or unfavorable effects on our effective income tax rate in individual jurisdictions or in the aggregate. These factors include whether tax authorities agree with our interpretations of existing tax laws, any required accounting for stock options and other share-based compensation, changes in tax laws and rates (including the recently enacted U.S. federal income tax law changes), our future levels of research and development spending, changes in accounting standards, changes in the mix of any future earnings in the various tax jurisdictions in which we may operate, the outcome of any examinations by the U.S. Internal Revenue Service or other tax authorities, the accuracy of our estimates for unrecognized tax benefits and realization of deferred tax assets and changes in overall levels of pre-tax earnings. The effect on our income tax liabilities resulting from the above-mentioned factors or other factors could have a material adverse effect on our results of operations.

***The 2017 comprehensive tax reform bill and possible future changes in tax laws or regulations could adversely affect our business and financial condition.***

On December 22, 2017, President Trump signed into law the Tax Act, which significantly revised the Internal Revenue Code of 1986, as amended (the Code). Future guidance from the U.S. Internal Revenue Service and other tax authorities with respect to the Tax Act may affect us, and certain aspects of the Tax Act could be repealed or modified in future legislation. Changes in corporate tax rates, the realization of net deferred tax assets relating to our U.S. operations, the taxation of foreign earnings, and the deductibility of expenses under the Tax Act or future tax reform legislation could have a material impact on the value of our deferred tax assets, could result in significant one-time charges in the current or future taxable years, and could increase our future U.S. tax expense. The foregoing items, as well as any other future changes in tax laws, could have a material adverse effect on our business, cash flow, financial condition, or results of operations. In addition, it is uncertain if and to what extent various states will conform to the Tax Act or any newly enacted federal tax legislation.

**Risks Related to Competition**

***We compete in an industry characterized by extensive research and development efforts and rapid technological progress. New discoveries or commercial developments by our competitors could render our potential products obsolete or non-competitive.***

New developments occur and are expected to continue to occur at a rapid pace, and there can be no assurance that discoveries or commercial developments by our competitors will not render some or all of our potential products obsolete or non-competitive, which would have a material adverse effect on our business, financial condition and results of operations.

We expect to compete with fully integrated and well-established pharmaceutical and biotechnology companies in the near and long term. Most of these companies have substantially greater financial, research and development, manufacturing and marketing experience and resources than we do and represent substantial long-term competition for us. Such companies may succeed in discovering and developing pharmaceutical products more rapidly than we do or pharmaceutical products that are safer, more effective or less costly than any that we may develop. Such companies also may be more successful than we are in production and marketing. Smaller companies may also prove to be significant competitors, particularly through collaborative arrangements with large pharmaceutical and established biotechnology companies. Academic institutions, governmental agencies and other public and private research organizations also conduct clinical trials, seek patent protection and establish collaborative arrangements for the development of oncology products.

We may face competition based on product efficacy and safety, the timing and scope of regulatory approvals, availability of supply, marketing and sales capabilities, reimbursement coverage, price and patent position. There can be no assurance that our competitors will not develop safer and more effective products, commercialize products earlier than we do, or obtain patent protection or intellectual property rights that limit our ability to commercialize our products.

There can be no assurance that our issued patents or pending patent applications, if issued, will not be challenged, invalidated or circumvented or that the rights granted thereunder will provide us with proprietary protection or a competitive advantage.

The biotechnology and pharmaceutical industries are intensely competitive and subject to rapid and significant technological change. Many of the products that we are attempting to develop and commercialize will be competing with existing therapies. In addition, a number of companies are pursuing the development of pharmaceuticals that target the same diseases and conditions that we are targeting. We face competition from pharmaceutical and biotechnology companies both in the United States and abroad. Our competitors may utilize discovery technologies and techniques or collaborate with third parties in order to develop products more rapidly or successfully than we or our collaborators are able to do. Many of our competitors, particularly large pharmaceutical companies, have substantially greater financial, technical and human resources than we do. In addition, academic institutions, government agencies and other public and private organizations conducting research may seek patent protection with respect to potentially competitive products or technologies and may establish exclusive collaborative or licensing relationships with our competitors.

We face intense competition in our development activities. We face competition from many companies in the United States and abroad, including a number of large pharmaceutical companies, firms specialized in the development and production of vaccines, checkpoint inhibitors, and other immunotherapies, and major universities and research institutions. Many companies have entered into the field of immuno-oncology and are developing or commercializing products in areas that we have targeted for product development. Some of these products use therapeutic approaches that may compete directly with our product candidates. Most of our competitors possess substantially greater financial, technical and human resources than we possess. In addition, many of our competitors have significantly greater experience than we have in conducting preclinical and nonclinical

testing and human clinical trials of product candidates, scaling up manufacturing operations and obtaining regulatory approvals of drugs and manufacturing facilities. Accordingly, our competitors may succeed in obtaining regulatory approval for drugs more rapidly than we do. We expect to face growing competition for enrollment of patients in our clinical trials, which could delay or adversely affect our ability to complete such trials. We may also be adversely affected by the clinical trial results of our competitors. For example, when a competitor announced negative clinical trial results with respect to an IDO pathway inhibitor, expectations about IDO pathway inhibitors were impacted and resulted in the re-evaluation of our indoximod clinical trials. If we obtain regulatory approval and launch commercial sales of our product candidates, we also will compete with respect to manufacturing efficiency and sales and marketing capabilities, areas in which we currently have limited experience.

We also face competition from pharmaceutical and biotechnology companies, academic institutions, government agencies and private research organizations in recruiting and retaining highly qualified scientific personnel and consultants and in the development and acquisition of technologies. Moreover, technology controlled by third parties that may be advantageous to our business may be acquired or licensed by our competitors, thereby preventing us from obtaining technology on commercially reasonable terms, if at all. We will also compete for the services of third parties that may have already developed or acquired internal biotechnology capabilities or made commercial arrangements with other biopharmaceutical companies to target the diseases on which we have focused both inside and outside of the United States.

Our competitive position will also depend upon our ability to attract and retain qualified personnel, obtain patent protection or otherwise develop proprietary products or processes and secure sufficient capital resources for the often lengthy period between technological conception and commercial sales. We will require substantial capital resources to complete development of some or all of our products, obtain the necessary regulatory approvals and successfully manufacture and market our products. In order to secure capital resources, we may elect to sell additional capital stock, which would dilute the holdings of existing stockholders. We may also attempt to obtain funds through research grants and agreements with commercial collaborators. However, these types of financings are uncertain because they are at the discretion of the organizations and companies that control the funds. Accordingly, we may not receive any additional funds from grants or collaborations.

Research and discoveries by others may result in breakthroughs that render indoximod, NLG802, NLG207, and NLG919 product candidates, or our other potential products obsolete even before they begin to generate any revenue. If the FDA approves the commercial sale of any of our product candidates, we will also be competing with respect to marketing capabilities and manufacturing efficiency, areas in which we have limited or no experience. We expect that competition among products approved for sale will be based, among other things, on product efficacy, price, safety, reliability, availability, patent protection, and sales, marketing and distribution capabilities. Our profitability and financial position will suffer if our products receive regulatory approval but cannot compete effectively in the marketplace.

***Our future products, if any, may not be accepted in the marketplace and therefore, we may not be able to generate significant revenue, or any revenue.***

Even if our potential products are approved for sale, physicians and the medical community may not ultimately use them or may use them only in applications more restricted than we expect. Our future products, if successfully developed, will compete with a number of traditional immuno-oncology products manufactured and marketed by major pharmaceutical and other biotechnology companies. Our products will also compete with new products currently under development by such companies and others. Physicians will prescribe a product only if they determine, based on experience, clinical data, side effect profiles and other factors, that it is beneficial as compared to other products currently in use. Many other factors influence the adoption of new products, including marketing and distribution restrictions, course of treatment, adverse publicity, product pricing, the views of thought leaders in the medical community and coverage and adequate reimbursement by government and private third-party payers.

### **Risks Related to Our Arrangements with Third Parties**

***We rely on third parties to conduct our preclinical studies and our clinical trials. If these third parties do not perform as contractually required or expected, we may not be able to obtain regulatory approval for our product candidates, or we may be delayed in doing so.***

We do not have the ability to conduct preclinical studies or clinical trials independently for our product candidates. We must rely on third parties, such as contract research organizations, medical institutions, academic institutions, clinical investigators and contract laboratories, as well as our strategic collaborators and the third parties that they may use, to conduct our preclinical studies and clinical trials. Other than to the extent that Merck is responsible for clinical trials of our Ebola vaccine product candidate, we are responsible for confirming that our studies are conducted in accordance with applicable regulations and that each of our clinical trials is conducted in accordance with its general investigational plan and protocol. The FDA requires us to

comply with GLP for conducting and recording the results of our preclinical studies and with GCP for conducting, monitoring, recording and reporting the results of clinical trials, to assure that data and reported results are accurate and that the clinical trial participants are adequately protected. Our reliance on third parties does not relieve us of these responsibilities. If the third parties conducting our clinical trials do not perform their contractual duties or obligations, do not meet expected deadlines, fail to comply with GCP, do not adhere to our clinical trial protocols or otherwise fail to generate reliable clinical data, we may need to enter into new arrangements with alternative third parties and our clinical trials may be more costly than expected or budgeted, be extended, delayed or terminated or may need to be repeated, and we may not be able to obtain regulatory approval for or to commercialize the product candidate being tested in such trials, or may be delayed in doing so.

Further, if our contract manufacturers are not in compliance with regulatory requirements at any stage, including post-marketing approval, we may be fined, forced to remove a product from the market and/or experience other adverse consequences, including delays, which could materially harm our business.

***If we fail to enter into any needed collaboration agreements for our product candidates, or if we enter into collaborations that are ultimately unsuccessful, we may be unable to commercialize any potential product effectively or at all.***

To successfully commercialize any potential product, we will need substantial financial resources as well as expertise and physical resources and systems. We may elect to develop some or all of these physical resources and systems and expertise ourselves or we may seek to collaborate with another company that can provide some or all of such physical resources and systems as well as financial resources and expertise, as we did in the case of the Genentech Agreement and the Merck Agreement. Such collaborations are complex, and any potential discussions may not result in a definitive agreement for many reasons. For example, whether we reach a definitive agreement for a collaboration will depend, among other things, upon our assessment of the collaborator's resources and expertise, the terms and conditions of the proposed collaboration, and the proposed collaborator's evaluation of a number of factors. Those factors may include the design or results of our clinical trials, the potential market for the subject product candidates, the costs and complexities of manufacturing and delivering the potential product to patients, the potential of competing products, the existence of uncertainty with respect to ownership or the coverage of our technology, which can exist if there is a challenge to such ownership without regard to the merits of the challenge and industry and market conditions generally. If we were to determine that a collaboration for a potential product is necessary or beneficial and were unable to enter into such a collaboration on acceptable terms, we might elect to delay or scale back the commercialization of the potential product in order to preserve our financial resources or to allow us adequate time to develop the required physical resources and systems and expertise ourselves.

If we enter into a collaboration agreement we consider acceptable, analogous to the Merck Agreement to develop and commercialize our Ebola vaccine, the collaboration may not proceed as quickly, smoothly or successfully as we plan. The risks in a collaboration agreement include the following:

- the collaborator may not apply the expected financial resources, efforts or required expertise in developing the physical resources and systems necessary to successfully commercialize the subject potential product;
- the collaborator may not invest in the development of a sales and marketing force and the related infrastructure at levels that ensure that sales of the potential product reach their full potential;
- disputes may arise between us and a collaborator that delay the commercialization or adversely affect its sales or profitability of the potential product; or
- the collaborator may independently develop, or develop with third parties, products that could compete with the potential product.

Under any collaboration for our product candidates, we will be dependent on our collaborators' performance of their responsibilities and their cooperation with us. Our collaborators may not perform their obligations under our agreements with them or otherwise cooperate with us. We cannot control whether our collaborators will devote the necessary resources to the activities contemplated by our collaborative agreements, nor can we control the timing of their performance. Our collaborators may choose to pursue existing or alternative technologies in preference to those being developed in collaboration with us. Disputes may arise between us and our collaborators that delay the development and commercialization of our product candidates, and such disputes may be difficult and costly to resolve or may not be resolved. In addition, a collaborator for the potential product may have the right to terminate the collaboration at its discretion, or to discontinue development of a particular product candidate. For example, in June 2017, Genentech gave notice that it was terminating the Genentech Agreement with respect to NLG919 and gave notice in May 2018 that the remainder of the Agreement would terminate no later than November 6, 2018. Further, Merck has the right to terminate the Merck Agreement for any reason after a specified advance notice period. Any termination may require us to seek a new collaborator, which we may not be able to do on a timely basis, if at all, or may require us to delay or scale back the development or commercialization efforts. The occurrence of any of

these events could adversely affect the development or commercialization of the potential product and materially harm our business and stock price by delaying the sale of any product that may be approved by the FDA in the future, by slowing the growth of such sales, by reducing the profitability of the product and/or by adversely affecting the reputation of the product.

***We may explore strategic collaborations that may never materialize or may fail.***

We may, in the future, periodically explore a variety of possible strategic collaborations in an effort to gain access to additional product candidates or resources. At the current time, we cannot predict what form such a strategic collaboration might take. We are likely to face significant competition in the process of seeking appropriate strategic collaborators, and such collaborations can be complicated and time-consuming to negotiate and document. We may not be able to negotiate strategic collaborations on acceptable terms, or at all. We are unable to predict when, if ever, we will enter into any additional strategic collaborations because of the numerous risks and uncertainties associated with establishing them.

***We are required under the Merck Agreement, and we may be required under other collaborations, to relinquish important rights to and control over the development of our product candidates to our collaborators or otherwise be subject to unfavorable terms.***

Our collaborations, including any future strategic collaborations we enter into, could subject us to a number of risks, including:

- we may be required to undertake the expenditure of substantial operational, financial and management resources;
- other than under the Merck Agreement, we may be required to issue equity securities that would dilute our existing stockholders' percentage ownership;
- we may be required to assume substantial actual or contingent liabilities;
- we may not be able to control the amount and timing of resources that our strategic collaborators devote to the development or commercialization of our product candidates;
- strategic collaborators may delay clinical trials, provide insufficient funding, terminate a clinical trial or abandon a product candidate, repeat or conduct new clinical trials or require a new version of a product candidate for clinical testing;
- strategic collaborators may not pursue further development and commercialization of products resulting from the strategic collaboration arrangement or may elect to discontinue research and development programs;
- strategic collaborators may not commit adequate resources to the marketing and distribution of our product candidates, limiting our potential revenues from these products;
- disputes may arise between us and our strategic collaborators that result in the delay or termination of the research, development or commercialization of our product candidates or that result in costly litigation or arbitration that diverts management's attention and consumes resources;
- strategic collaborators may experience financial difficulties;
- strategic collaborators may not properly maintain or defend our intellectual property rights or may use our proprietary information in a manner that could jeopardize or invalidate our proprietary information or expose us to potential litigation;
- business combinations or significant changes in a strategic collaborator's business strategy may also adversely affect a strategic collaborator's willingness or ability to complete its obligations under any arrangement;
- strategic collaborators could decide to move forward with a competing product candidate developed either independently or in collaboration with others, including our competitors; and
- strategic collaborators could terminate the arrangement or allow it to expire, which would delay the development and may increase the cost of developing our product candidates.

**Risks Related to Protecting Our Intellectual Property**

***If we are unable to protect our proprietary rights or to defend against infringement claims, we may not be able to compete effectively or operate profitably.***

Our success will depend, in part, on our ability to obtain patents, operate without infringing the proprietary rights of others and maintain trade secrets, both in the United States and other countries. Patent matters in the biotechnology and pharmaceutical industries can be highly uncertain and involve complex legal and factual questions. Accordingly, the validity, breadth, and enforceability of our patents and the existence of potentially blocking patent rights of others cannot be predicted, either in the United States or in other countries.

There can be no assurance that we will discover or develop patentable products or processes, or that patents will issue from any of the currently pending patent applications or that claims granted on issued patents will be sufficient to protect our technology or adequately cover the products we may actually sell. Potential competitors or other researchers in the field may have filed patent applications, been issued patents, published articles or otherwise created prior art that could restrict or block our efforts to obtain additional patents. There also can be no assurance that our issued patents or pending patent applications, if issued, will not be challenged, invalidated, rendered unenforceable or circumvented or that the rights granted thereunder will provide us with proprietary protection or competitive advantages. Our patent rights also depend on our compliance with technology and patent licenses upon which our patent rights are based and upon the validity of assignments of patent rights from consultants and other inventors that were, or are, not employed by us.

In addition, competitors may manufacture and sell our potential products in those foreign countries where we have not filed for patent protection or where patent protection may be unavailable, not obtainable or ultimately not enforceable. In addition, even where patent protection is obtained, third-party competitors may challenge our patent claims in the various patent offices, for example via opposition in the European Patent Office or reexamination or interference proceedings in the United States Patent and Trademark Office (USPTO). The ability of such competitors to sell such products in the United States or in foreign countries where we have obtained patents is usually governed by the patent laws of the countries in which the product is sold.

Merck, which has sublicensed our Ebola vaccine, has received correspondence from Yale University asserting that it owns certain intellectual property rights with respect to the Ebola vaccine that they assert, among other things, may need to be licensed by Merck. We also received correspondence from Yale University relating to the research and construction of the Ebola vaccine by our licensor PHAC. If Merck were required to pay royalties to Yale University, that could result in a reduction of Merck's royalty obligations to us. If Merck otherwise suffered damages as a result of claims by Yale University, it is possible that Merck could seek indemnification from us.

We will incur significant ongoing expenses in maintaining our patent portfolio. Should we lack the funds to maintain our patent portfolio or to enforce our rights against infringers, we could be adversely impacted. Even if claims of infringement are without merit, any such action could divert the time and attention of management and impair our ability to access additional capital and/or cost us significant funds to defend.

***We intend to rely on patent rights for our product candidates and any future product candidates. If we are unable to obtain or maintain exclusivity from the combination of these approaches, we may not be able to compete effectively in our markets.***

We rely or will rely upon a combination of patents, trade secret protection, and confidentiality agreements to protect the intellectual property related to our technologies and product candidates. Our success depends in large part on our and our licensors' ability to obtain regulatory exclusivity and maintain patent and other intellectual property protection in the United States and in other countries with respect to our proprietary technologies and product candidates.

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

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

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

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

***We may not have sufficient patent term protections for our product candidates to effectively protect our business.***

Patents have a limited term. In the United States, the statutory expiration of a patent is generally 20 years after it is filed. Additional patent terms may be available through a patent term adjustment process, resulting from the USPTO delays during prosecution. Although various extensions may be available, the life of a patent, and the protection it affords, is limited. Even if patents covering our product candidates are obtained, once the patent life has expired for a product candidate, we may be open to competition from generic medications.

Patent term extensions under the Hatch-Waxman Act in the United States and under supplementary protection certificates in Europe may be available to extend the patent or data exclusivity terms of our product candidates. We will likely rely on patent term extensions, and we cannot provide any assurances that any such patent term extensions will be obtained and, if so, for how long. As a result, we may not be able to maintain exclusivity for our product candidates for an extended period after regulatory approval, if any, which would negatively impact our business, financial condition, results of operations, and prospects. If we do not have sufficient patent terms or regulatory exclusivity to protect our product candidates, our business and results of operations will be adversely affected.

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

On September 16, 2011, the Leahy-Smith America Invents Act (the Leahy-Smith Act) was signed into law. The Leahy-Smith Act includes a number of significant changes to United States patent law. These include provisions that affect the way patent applications will be prosecuted and may also affect patent litigation. The United States Patent and Trademark Office has developed regulations and procedures to govern administration of the Leahy-Smith Act, but many of the substantive changes to patent law associated with the Leahy-Smith Act, particularly the first-inventor-to-file provisions, only became effective 18 months after its enactment. Accordingly, it is not clear what, if any, impact the Leahy-Smith Act will have on the operation of our business. However, the Leahy-Smith Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents, all of which could have a material adverse effect on our business and financial condition.

***We may be subject to litigation with respect to the ownership and use of intellectual property that will be costly to defend or pursue and uncertain in its outcome.***

Our success also will depend, in part, on our refraining from infringing patents or otherwise violating intellectual property owned or controlled by others. Pharmaceutical companies, biotechnology companies, universities, research institutions, and others may have filed patent applications or have received, or may obtain, issued patents in the United States or elsewhere relating to aspects of our technology. It is uncertain whether the issuance of any third-party patents will require us to alter our products or processes, obtain licenses, or cease certain activities. Some third-party applications or patents may conflict with our issued patents or pending applications. Any such conflict could result in a significant reduction of the scope or value of our issued or licensed patents.

In addition, if patents issued to other companies contain blocking, dominating or conflicting claims and such claims are ultimately determined to be valid, we may be required to obtain licenses to these patents or to develop or obtain alternative non-infringing technology and cease practicing those activities, including potentially manufacturing or selling any products deemed to infringe those patents. If any licenses are required, there can be no assurance that we will be able to obtain any such licenses on commercially favorable terms, if at all, and if these licenses are not obtained, we might be prevented from pursuing the development and commercialization of certain of our potential products. Our failure to obtain a license to any technology that we may require to commercialize our products on favorable terms may have a material adverse impact on our business, financial condition and results of operations.

Litigation, which could result in substantial costs to us (even if determined in our favor), may also be necessary to enforce any patents issued or licensed to us or to determine the scope and validity of the proprietary rights of others. There can be no assurance that our issued or licensed patents would be held valid by a court of competent jurisdiction or that any third party would be found to infringe our patents.

In addition, if our competitors filed patent applications in the United States that claim technology also claimed by us, and such applications were filed before the Leahy-Smith Act took effect, we may have to participate in interference proceedings to determine priority of invention. These proceedings, if initiated by the USPTO, could result in substantial cost to us, even if the eventual outcome is favorable to us. Such proceedings can be lengthy; are costly to defend and involve complex questions of law and fact, the outcomes of which are difficult to predict. An adverse outcome with respect to a third party claim or in an interference proceeding could subject us to significant liabilities, require us to license disputed rights from third parties, or require us to cease using such technology, any of which could have a material adverse effect on our business, financial condition and results of operations.

We also rely on trade secrets to protect technology, especially where patent protection is not believed to be appropriate or obtainable or where patents have not issued. We attempt to protect our proprietary technology and processes, in part, with confidentiality agreements and assignment of invention agreements with our employees and confidentiality agreements with our consultants and certain contractors. There can be no assurance that these agreements will not be breached, that we would have adequate remedies for any breach, or that our trade secrets will not otherwise become known or be independently discovered by competitors. We may fail in certain circumstances to obtain the necessary confidentiality agreements, or their scope or term may not be sufficiently broad to protect our interests.

If our trade secrets or other intellectual property becomes known to our competitors, it could result in a material adverse effect on our business, financial condition and results of operations. To the extent that we or our consultants or research collaborators use intellectual property owned by others in work for us, disputes may also arise as to the rights to related or resulting know-how and inventions.

***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 United States can be less extensive than those in the United States. In addition, the laws of some foreign countries do not protect intellectual property rights to the same extent as federal and state laws in the United States. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop our own products and may also export infringing products to territories where we have patent protection, but enforcement is not as strong as that in the United States.

These products may compete with our products 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 some countries, particularly some 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, whether or not successful, 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.

### **Risks Related to Our Exposure to Litigation**

***We are exposed to potential product liability or similar claims, and insurance against these claims may not be available to us at a reasonable rate in the future.***

Our business exposes us to potential liability risks that are inherent in the testing, manufacturing, marketing and commercial sale of human therapeutic products. Clinical trials involve the testing of product candidates on human subjects or volunteers

under a research plan and carry a risk of liability for personal injury or death to patients due to unforeseen adverse side effects, improper administration of the product candidate, or other factors. Many of these patients are already seriously ill and are therefore particularly vulnerable to further illness or death. In addition, healthy volunteers in our indoximod clinical trial or our Ebola vaccine product candidate clinical trial may suffer, or perceive themselves to suffer, personal injury or death related to the Ebola vaccine product candidates and may initiate legal action against us.

We carried clinical trial liability insurance in the amount of \$5.0 million through July 9, 2019 in the aggregate for claims related to our product candidates other than our Ebola vaccine product candidate. We currently carry clinical trial liability insurance in the amount of \$10.0 million in the aggregate for claims related to our Ebola vaccine product candidate. We additionally currently carry clinical trial coverage in lower aggregate amounts in local markets where our clinical trials are conducted on a selective, trial by trial basis. There can be no assurance that we will be able to maintain such insurance or that the amount of such insurance will be adequate to cover claims. We could be materially and adversely affected if we were required to pay damages or incur defense costs in connection with a claim outside the scope of indemnity or insurance coverage, if the indemnity is not performed or enforced in accordance with its terms, or if our liability exceeds the amount of applicable insurance. In addition, there can be no assurance that insurance will continue to be available on terms acceptable to us, if at all, or that if obtained, the insurance coverage will be sufficient to cover any potential claims or liabilities. Similar risks would exist upon the commercialization or marketing of any future products by us or our collaborators.

Our Ebola vaccine product is covered under the Public Readiness and Emergency Preparedness Act. This declaration provides immunity under U.S. law against legal claims related to the manufacturing, testing, development, distribution and administration of our vaccine candidate. It does not generally provide immunity for a claim brought in a court outside the United States.

Regardless of their merit or eventual outcome, product liability claims may result in:

- decreased demand for our product;
- injury to our reputation and significant negative media attention;
- withdrawal of clinical trial volunteers;
- costs of litigation;
- distraction of management; and
- substantial monetary awards to plaintiffs.

***We are involved in a securities class-action litigation and are at risk of additional similar litigation in the future that could divert management's attention and adversely affect our business and could subject us to significant liabilities.***

In the past, securities class action litigation has often been brought against a company following periods of volatility in the market price of securities. We are a party to the securities class action litigation described in Note 14 to the consolidated financial statements included in Item 8 of this Annual Report on Form 10-K under the heading "Legal Proceedings." The defense of this litigation may increase our expenses and divert our management's attention and resources and any unfavorable outcome could have a material adverse effect on our business and results of operations. Any adverse determination in this litigation, or any amounts paid to settle this litigation could require that we make significant payments. In addition, we may in the future be the target of other securities class actions or similar litigation.

### **Risks Related to Ownership of Our Common Stock**

***The market price of our common stock may be highly volatile, and could decline significantly.***

The trading price of our common stock is likely to be highly volatile and could be subject to wide fluctuations in price in response to various factors, many of which are beyond our control, including those described elsewhere in this "Risk Factors" section of this Annual Report on Form 10-K and the following:

- new products, product candidates or new uses for existing products introduced or announced by our strategic collaborators, or our competitors, and the timing of these introductions or announcements;
- actual or anticipated results from and any delays in our clinical trials, as well as results of regulatory reviews relating to the approval of our product candidates;
- variations in the level of expenses related to any of our product candidates or clinical development programs,

including those relating to the timing of invoices from, and other billing practices of, our clinical research organizations and clinical trial sites;

- expenses related to, or our ability or perceived ability to secure, an adequate supply of any future products approved for commercial sale;
- the results of our efforts to discover, develop, acquire or in-license additional product candidates or products;
- disputes or other developments relating to proprietary rights, including patents, litigation matters and our ability to obtain patent protection for our technologies;
- announcements by us or our competitors of significant acquisitions, strategic collaborations, joint ventures and capital commitments;
- the commercial or clinical success or failure, or perceived success or failure, of our collaborators, including Merck;
- additions or departures of key scientific or management personnel;
- changes in the structure of the healthcare payment system;
- conditions or trends in the biotechnology and biopharmaceutical industries;
- media attention, or changes in media attention, given to cancer and cancer treatment, the recent Ebola epidemic and efforts to develop treatments and vaccines for Ebola, or any other condition or disease that our product candidates are being developed to treat;
- actual or anticipated changes in earnings estimates, development timelines or recommendations by securities analysts;
- actual and anticipated fluctuations in our quarterly operating results;
- the financial projections we may provide to the public, and any changes in these projections or our failure to meet these projections;
- deviations from securities analysts' estimates or the impact of other analyst rating downgrades by any securities analysts who follow our common stock;
- other events or factors, including those resulting from political uncertainty, war, incidents of terrorism, natural disasters or responses to these events;
- changes in accounting principles;
- discussion of us or our stock price by the financial and scientific press and in online investor communities;
- general economic and market conditions 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
- sales of common stock by us or our stockholders in the future, as well as the overall trading volume of our common stock.

In addition, the stock market in general and the market for biotechnology and biopharmaceutical companies in particular have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. These broad market and industry factors may seriously harm the market price of our common stock, regardless of our operating performance. In the past, following periods of volatility in the market, securities class-action litigation has often been instituted against companies. We are currently party to the securities class action litigation described in Note 14 to the consolidated financial statements in Item 8 of this Annual Report on Form 10-K under the heading "Legal Proceedings." This litigation and others like it that could be brought against us in the future could result in substantial costs and diversion of management's attention and resources, which could materially and adversely affect our business and financial condition.

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

As of December 31, 2019, our executive officers, directors and principal stockholders, together with their respective affiliates, owned approximately 37.9% of our common stock, including shares subject to outstanding options that are exercisable within 60 days after December 31, 2019. These stockholders will be able to exert a significant degree of influence over our

management and affairs and over matters requiring stockholder approval, including the election of our Board of Directors, future issuances of our common stock or other securities, declarations of dividends on our common stock and approval of other significant corporate transactions. This concentration of ownership could have the effect of delaying or preventing a change in our control or otherwise discouraging a potential acquirer from attempting to obtain control of us, which in turn could have a material and adverse effect on the fair market value of our common stock. In addition, sales of shares beneficially owned by executive officers and directors and their affiliates could be viewed negatively by third parties and have a negative impact on our stock price. Moreover, we cannot assure you as to how these shares may be distributed and subsequently voted.

***Our amended and restated bylaws designates the state courts in the State of Delaware of, if no state court located within the State of Delaware has jurisdiction, the federal court for the District of Delaware, as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, which could discourage lawsuits against us or our directors, officers, or employees.***

Our amended and restated bylaws (Bylaws) provides that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if and only if the Court of Chancery of the State of Delaware lacks subject matter jurisdiction, any state court located within the State of Delaware or, if and only if all such state courts lack subject matter jurisdiction, the federal district court for the District of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for the following types of actions or proceedings under Delaware statutory or common law: (1) any derivative action or proceeding brought on behalf of the corporation; (2) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, other employee or stockholder of the corporation to the corporation or to the corporation's stockholders; (3) any action asserting a claim arising pursuant to any provision of the DGCL, our amended and restated certificate of incorporation or the Bylaws or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware; or (4) any action asserting a claim governed by the internal affairs doctrine. This choice of forum provision does not apply to suits brought to enforce a duty or liability created by the Securities Act, or the Exchange Act, or any claim for which the federal courts have exclusive jurisdiction.

These choice of forum provisions may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, or other employees and may discourage these types of lawsuits. Furthermore, if a court were to find the choice of forum provisions contained in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions.

***We incur significant costs as a result of operating as a public company, and our management is required to devote substantial time to meet compliance obligations.***

As a public company, we incur significant legal, accounting and other expenses to comply with reporting requirements of the Exchange Act, the Sarbanes-Oxley Act of 2002 (the Sarbanes-Oxley Act), as well as rules subsequently implemented by the SEC and The Nasdaq Global Market. Meeting the requirements of these rules and regulations entails significant legal and financial compliance costs, makes some activities more difficult, time-consuming or costly and may also place undue strain on our personnel, systems and resources. Our management and other personnel devote a substantial amount of time to these compliance requirements. In addition, these rules and regulations may make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, it may be more difficult for us to attract and retain qualified people to serve on our Board of Directors, our board committees or as executive officers.

***Failure to achieve and maintain effective internal controls in accordance with Section 404 of the Sarbanes-Oxley Act could have a material adverse effect on our ability to produce accurate financial statements and on our stock price.***

Pursuant to Section 404 of the Sarbanes-Oxley Act, we are required to publish a report by our management on our internal control over financial reporting. To achieve compliance with Section 404, we have engaged in a process to document and evaluate our internal control over financial reporting, which has been both costly and challenging. To maintain compliance on an ongoing basis, we will need to dedicate internal resources, engage outside consultants and adopt a detailed work plan. Despite our effort, there is a risk that neither we nor our independent registered public accounting firm will be able to conclude that our internal control over financial reporting is effective as required by Section 404. This could result in an adverse reaction in the financial markets due to a loss of confidence in the reliability of our financial statements.

***We do not expect to pay any cash dividends for the foreseeable future. Investors may never obtain a return on their investment.***

You should not rely on an investment in our common stock to provide dividend income. We do not anticipate that we will pay any cash dividends to holders of our common stock in the foreseeable future. Instead, we plan to retain any earnings to maintain and expand our existing operations. In addition, any future debt financing arrangement may contain terms prohibiting or limiting the amount of dividends that may be declared or paid on our common stock. Accordingly, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any return on their investment. As a result, investors seeking only cash dividends should not purchase our common stock.

***Provisions in our certificate of incorporation, our by-laws or Delaware law might discourage, delay or prevent a change in control of our company or changes in our management and, therefore, depress the trading price of our common stock.***

Provisions of our certificate of incorporation, our by-laws or Delaware law may have the effect of deterring unsolicited takeovers or delaying or preventing a change in control of our company or changes in our management, including transactions in which our stockholders might otherwise receive a premium for their shares over then current market prices. In addition, these provisions may limit the ability of stockholders to approve transactions that they may deem to be in their best interest. These provisions include:

- the division of our Board of Directors into three classes with staggered, three-year terms;
- advance notice requirements for stockholder proposals and nominations;
- the inability of stockholders to call special meetings;
- limitations on the ability of stockholders to remove directors or amend our by-laws; and
- the ability of our Board of Directors to designate the terms of and issue new series of preferred stock without stockholder approval, which could include the right to approve an acquisition or other change in our control or could be used to institute a rights plan, also known as a poison pill, that would work to dilute the stock ownership of a potential hostile acquirer, likely preventing acquisitions that have not been approved by our Board of Directors.

In addition, Section 203 of the Delaware General Corporation Law prohibits a publicly-held Delaware corporation from engaging in a business combination with an interested stockholder, generally a person that together with its affiliates owns, or within the last three years has owned, 15% of our voting stock, for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner.

The existence of the foregoing provisions and anti-takeover measures could limit the price that investors might be willing to pay in the future for shares of our common stock. They could also deter potential acquirers of our company, thereby reducing the likelihood that you could receive a premium for your common stock in an acquisition.

***The holdings of our stockholders may be diluted, and the prices of our securities may decrease, by the exercise of outstanding stock options or by future issuances of securities by us.***

We may issue additional common stock, preferred stock, restricted stock units, or securities convertible into or exchangeable for our common stock. Furthermore, substantially all shares of common stock for which our outstanding stock options are exercisable are, once they have been purchased, eligible for immediate sale in the public market. The issuance of additional common stock, preferred stock, restricted stock units, or securities convertible into or exchangeable for our common stock or the exercise of stock options would dilute existing investors and could adversely affect the price of our securities. In addition, such securities may have rights senior to the rights of securities held by existing investors.

***Our ability to use our net operating loss carryforwards and certain other tax attributes is limited by Sections 382 and 383 of the Code.***

Sections 382 and 383 of the Code limit a corporation's ability to utilize its net operating loss carryforwards and certain other tax attributes (including research credits) to offset any future taxable income or tax if the corporation experiences a cumulative ownership change of more than 50% over any rolling three-year period. State net operating loss carryforwards (and certain other tax attributes) may be similarly limited. A Section 382 ownership change can, therefore, result in significantly greater tax liabilities than a corporation would incur in the absence of such a change, and any increased liabilities could adversely affect the corporation's business, results of operations, financial condition and cash flow.

Based on Section 382 ownership change analyses, we believe that, from our inception through June 30, 2019, we experienced Section 382 ownership changes in September 2001 and March 2003, and BPS experienced Section 382 ownership changes in January 2006 and January 2011. These ownership changes limited our ability to utilize federal net operating loss carryforwards and certain other tax attributes that accrued prior to the respective ownership changes of us and our subsidiaries and may continue to limit our ability to utilize such attributes in the future.

Additional ownership changes may occur in the future as a result of events over which we will have little or no control, including purchases and sales of our equity by our 5% stockholders, the emergence of new 5% stockholders, additional equity offerings or redemptions of our stock or certain changes in the ownership of any of our 5% stockholders.

***Accounting pronouncements may impact our reported results of operations and financial position.***

United States generally accepted accounting principles (U.S. GAAP) and related implementation guidelines and interpretations can be highly complex and involve subjective judgments. Changes in these rules or their interpretation, the adoption of new pronouncements or the application of existing pronouncements to changes in our business could significantly alter our reported financial statements and results of operations.

***If securities or industry analysts do not publish research or publish inaccurate or unfavorable research about our business, our stock price and trading volume could decline.***

The trading market for our common stock will depend in part on the research and reports that securities or industry analysts publish about us or our business. If one or more of the analysts who covers us downgrades our stock or publishes inaccurate or unfavorable research about our business, our stock price would likely decline. If one or more of these analysts ceases coverage of us or fails to publish reports on us regularly, demand for our stock could decrease, which could cause our stock price and trading volume to decline.

**Item 1B. UNRESOLVED STAFF COMMENTS**

None.

**Item 2. PROPERTIES**

We conduct our primary operations at leased facilities described below.

<b>Location</b>	<b>Operations Conducted</b>	<b>Approximate Square Feet</b>	<b>Lease Expiration Date</b>
Ames, Iowa	Executive offices and research and development	26,616	March 2021
Ames, Iowa	Research and development	23,544	January 2020
Wayne, Pennsylvania	Clinical, regulatory, and executive offices	3,255	February 2021

We believe that our administrative office space is adequate to meet our needs for the foreseeable future. We did not renew the lease that expired on January 31, 2020 relating to our research and development facilities in Ames, Iowa. We executed a sublease agreement for the Wayne, Pennsylvania lease on February 28, 2020 that extends through the lease expiration date of February 2021.

**Item 3. LEGAL PROCEEDINGS**

In addition to the legal proceedings described in Note 14 to the consolidated financial statements included in Item 8 of this Form 10-K, we may be subject to various legal proceedings and claims that arise in the ordinary course of our business activities. Although the results of litigation and claims cannot be predicted with certainty, we do not believe we are party to any claim or litigation the outcome of which, if determined adversely to us, would individually or in the aggregate be reasonably expected to have a material adverse effect on our business. 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.

## PART II

### Item 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASE OF EQUITY SECURITIES

Our common stock is quoted on The Nasdaq Global Market under the symbol. "NLNK".

As of February 28, 2020, we had 79 stockholders of record of our common stock. The actual number of stockholders may be greater than this number of record holders, and includes stockholders who are beneficial owners, but whose shares are held in street name by brokers and other nominees. This number of holders of record also does not include stockholders whose shares may be held in trust by other entities.

#### Dividend Policy

We have never paid cash dividends. We do not expect to declare or pay any cash dividends on our common stock in the near future. We intend to retain all earnings, if any, to invest in our operations. The payment of future dividends is within the discretion of our board of directors and will depend upon our future earnings, if any, our capital requirements, financial condition and other relevant factors.

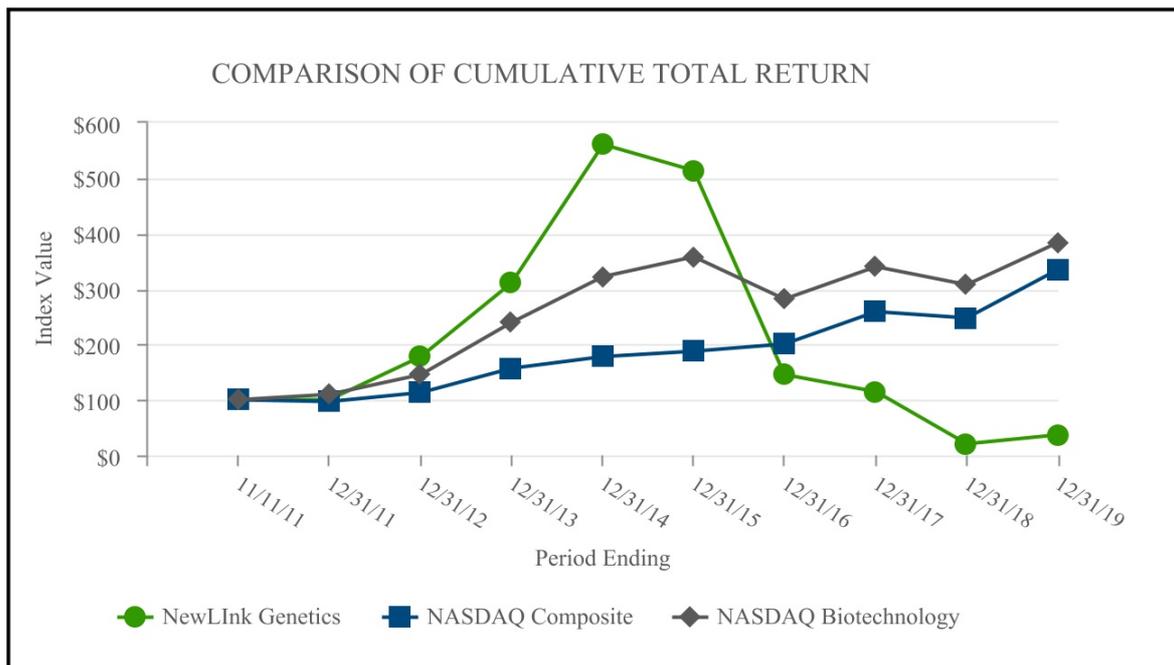
#### Securities Authorized for Issuance under Equity Compensation Plans

Information about our equity compensation plans is incorporated by reference to Item 12 of Part III of this Annual Report on Form 10-K.

#### Our Stock Performance

The following graph compares cumulative total return of our Common Stock with the cumulative total return of (i) the Nasdaq Stock Market-United States, and (ii) The Nasdaq Biotechnology Index. The graph assumes (a) \$100 was invested on November 11, 2011 in our Common Stock, the stocks comprising The Nasdaq Stock Market-United States and the stocks comprising The Nasdaq Biotechnology Index, and (b) the reinvestment of dividends. The comparisons shown in the graph are based on historical data and the stock price performance shown in the graph is not necessarily indicative of, or intended to forecast, future performance of our stock.

\* \$100 invested on November 11, 2011 in stock or index, including reinvestment of dividends.



**Cumulative Total Return**

	11/11/2011	12/31/2011	12/31/2012	12/31/2013	12/31/2014	12/31/2015	12/31/2016	12/31/2017	12/31/2018	12/31/2019
NewLink Genetics Corporation	\$100	\$99	\$177	\$311	\$561	\$514	\$145	\$115	\$21	\$36
Nasdaq Composite	\$100	\$97	\$113	\$156	\$177	\$187	\$201	\$258	\$248	\$335
Nasdaq Biotechnology	\$100	\$110	\$145	\$240	\$322	\$358	\$281	\$340	\$308	\$383

Date*	Transaction Type	Closing Price**	Beginning No. Of Shares***	Dividend per Share	Dividend Paid	Shares Reinvested	Ending Shares	Cum. Total Return
11/11/2011	Begin	\$7.08	14,124				14,124	\$100.0
12/31/2011	Year End	\$7.04	14,124				14,124	\$99.4
12/31/2012	Year End	\$12.50	14,124				14,124	\$176.6
12/31/2013	Year End	\$22.01	14,124				14,124	\$310.9
12/31/2014	Year End	\$39.75	14,124				14,124	\$561.4
12/31/2015	Year End	\$36.39	14,124				14,124	\$514.0
12/31/2016	Year End	\$10.28	14,124				14,124	\$145.0
12/31/2017	Year End	\$8.11	14,124				14,124	\$115.0
12/31/2018	Year End	\$1.52	14,124				14,124	\$21.0
12/31/2019	Year End	\$2.53	14,124				14,124	\$36.0

\* Specified ending dates are ex-dividends dates.

\*\* All Closing Prices and Dividends are adjusted for stock splits and stock dividends.

\*\*\* 'Begin Shares' based on \$100 investment.

**Recent Sales of Unregistered Securities**

None

**Repurchases of Equity Securities**

Period	Total Number of Shares Purchased	Average Price Paid per Share
October 1, 2019 - October 31, 2019	—	\$ —
November 1, 2019 - November 30, 2019	2,235	1.53
December 1, 2019 - December 31, 2019	—	—
<b>Total</b>	<b>2,235</b>	<b>\$ 1.53</b>

The Company does not have a formal policy regarding the source of shares issued upon exercise of stock options or issuance of restricted stock. The Company expects shares issued to be issued from treasury shares or new shares.

**Use of Proceeds**

Not applicable.

## Item 6. SELECTED CONSOLIDATED FINANCIAL DATA

You should read the following selected consolidated financial data together with our financial statements and the related notes appearing at the end of this Annual Report on Form 10-K and the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section of this annual report.

We derived the annual consolidated financial data from our audited consolidated financial statements. The statement of operations data for the years ended December 31, 2019, 2018, and 2017 and the balance sheet data as of December 31, 2019, and 2018 have been derived from our audited financial statements included elsewhere in this Annual Report on Form 10-K. We derived the summary consolidated statement of operations data for the years ended December 31, 2016 and 2015 and the balance sheet data as of December 31, 2017, 2016 and 2015 from our audited consolidated financial statements not included in this Annual Report on Form 10-K.

Our historical results for any prior period are not necessarily indicative of results to be expected in any future period.

	Year Ended December 31,				
	2019	2018	2017	2016	2015
	(in thousands, except per share data)				
<b>Statement of operations data:</b>					
Grant revenue	\$ —	\$ 11,268	\$ 28,321	\$ 32,242	\$ 32,358
Licensing and collaboration revenue	936	1,206	390	3,526	36,143
<b>Total operating revenue</b>	<b>936</b>	<b>12,474</b>	<b>28,711</b>	<b>35,768</b>	<b>68,501</b>
<b>Operating expenses:</b>					
Research and development	22,205	45,694	69,866	93,300	71,414
General and administrative	23,865	29,218	31,726	33,226	30,689
<b>Total operating expenses</b>	<b>46,070</b>	<b>74,912</b>	<b>101,592</b>	<b>126,526</b>	<b>102,103</b>
<b>Loss from operations</b>	<b>(45,134)</b>	<b>(62,438)</b>	<b>(72,881)</b>	<b>(90,758)</b>	<b>(33,602)</b>
<b>Other income and expense:</b>					
Miscellaneous (expense) income	(19)	(102)	(126)	32	(14)
Interest income	2,226	2,029	616	237	78
Interest expense	(50)	(52)	(119)	(22)	(105)
<b>Other income (expense), net</b>	<b>2,157</b>	<b>1,875</b>	<b>371</b>	<b>247</b>	<b>(41)</b>
<b>Net loss before taxes</b>	<b>(42,977)</b>	<b>(60,563)</b>	<b>(72,510)</b>	<b>(90,511)</b>	<b>(33,643)</b>
Income tax (expense) benefit	(12)	6,968	559	5,356	(6,738)
<b>Net loss</b>	<b>\$ (42,989)</b>	<b>\$ (53,595)</b>	<b>\$ (71,951)</b>	<b>\$ (85,155)</b>	<b>\$ (40,381)</b>
<b>Basic loss per share</b>	<b>\$ (1.15)</b>	<b>\$ (1.44)</b>	<b>\$ (2.30)</b>	<b>\$ (2.94)</b>	<b>\$ (1.41)</b>
<b>Diluted loss per share</b>	<b>\$ (1.15)</b>	<b>\$ (1.44)</b>	<b>\$ (2.30)</b>	<b>\$ (2.94)</b>	<b>\$ (1.41)</b>
<b>Basic average shares outstanding</b>	<b>37,295</b>	<b>37,191</b>	<b>31,304</b>	<b>28,979</b>	<b>28,587</b>
<b>Diluted average shares outstanding</b>	<b>37,295</b>	<b>37,191</b>	<b>31,304</b>	<b>28,979</b>	<b>28,587</b>

	As of December 31,				
	2019	2018	2017	2016	2015
	(in thousands)				
<b>Balance sheet data:</b>					
Cash, cash equivalents, and certificates of deposit	\$ 90,549	\$ 120,738	\$ 158,708	\$ 131,490	\$ 197,800
Working capital	82,592	118,225	153,435	130,007	193,302
Total assets	96,787	130,939	180,697	174,747	218,542
Royalty obligations, notes payable and obligations under capital leases	7,225	6,104	6,271	6,517	6,381
Accumulated deficit	(334,001)	(291,012)	(237,459)	(165,508)	(80,353)
Total stockholders' equity	78,878	115,143	151,557	129,466	195,744

## **Item 7. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

*The following discussion and analysis should be read in conjunction with the consolidated financial statements and notes thereto included in Part II, Item 8 of this Annual Report on Form 10-K. This discussion contains forward-looking statements that involve risks and uncertainties. As a result of many factors, such as those set forth under “Risk Factors” and elsewhere in this Annual Report on Form 10-K, our actual results may differ materially from those anticipated in these forward-looking statements. You should not place undue reliance on these forward-looking statements, which apply only as of the date of this Annual Report on Form 10-K. Except as required by law, we assume no obligation to update these forward-looking statements publicly, or to update the reasons actual results could differ materially from those anticipated in these forward-looking statements, even if new information becomes available in the future.*

*You should read this Annual Report on Form 10-K and the documents that we reference in this Annual Report on Form 10-K completely.*

### **Overview**

We are a clinical-stage company that has historically focused on developing novel immunotherapeutic products for the treatment of patients with cancer. Our small-molecule product candidates target the IDO pathway, which is one of the key pathways for cancer immune escape. These product candidates, indoximod and NLG802 (a prodrug of indoximod), are IDO pathway inhibitors with mechanisms of action that center around breaking the immune system’s tolerance to cancer. We also have an additional small molecule product candidate, NLG207, which is a nanoparticle-drug conjugate consisting of a cyclodextrin-based polymer backbone linked to camptothecin, a topoisomerase 1 inhibitor, which was out-licensed to Ellipse Pharma Limited, effective December 17, 2019.

We had a net loss of \$43.0 million for the year ended December 31, 2019.

### **Lumos Merger**

On September 30, 2019, we entered into an Agreement and Plan of Merger and Reorganization (as amended, the Merger Agreement) with Cyclone Merger Sub, Inc., a wholly-owned subsidiary of NewLink (the Merger Sub) and Lumos Pharma, Inc., a privately-held Delaware corporation (Lumos), pursuant to which, among other things, subject to the satisfaction or waiver of the conditions set forth in the Merger Agreement, Merger Sub will merge with and into Lumos, with Lumos surviving as our wholly-owned subsidiary (the Merger). Following the Merger, we will change our name to “Lumos Pharma, Inc.” and Lumos will change its name to a name mutually agreed upon by us and Lumos.

If our stockholders approve the Merger, at the effective time of the Merger (the Effective Time), each share of Lumos capital stock outstanding immediately prior to the Effective Time (excluding shares of Lumos capital stock held as treasury stock or held or owned by Lumos or Merger Sub prior to the Effective Time and shares held by Lumos stockholders who have exercised and perfected appraisal rights in accordance with Delaware law) shall be automatically converted solely into the right to receive a number of shares of our common stock equal to the amount determined pursuant to a charter amendment to Lumos’ certificate of incorporation that will be filed prior to the Effective Time, at exchange ratios applicable to each type of Lumos capital stock. Pursuant to such conversion, immediately following the Merger, former Lumos stockholders will own approximately 50% of the aggregate number of shares of our common stock issued and outstanding following the consummation of the Merger (the Post-Closing Shares), and our stockholders as of immediately prior to the Merger will own approximately 50% of the aggregate number of Post-Closing Shares. Outstanding options to purchase Lumos common stock will be assumed by us and converted into options to purchase a number of shares of our common stock at the exchange ratio applicable to exchanging shares of Lumos common stock for our common stock.

The Merger Agreement includes customary representations, warranties and covenants made by the Company and Lumos, including covenants relating to the Company’s and Lumos’ conduct of their respective businesses between the date of signing the Merger Agreement and the closing of the Merger. Consummation of the Merger is subject to certain closing conditions, including, among other things, approval by the stockholders of the Company and Lumos. Lumos stockholders approved the Merger in September 2019. The Merger Agreement contains certain termination rights for both NewLink and Lumos, and further provides that, upon termination of the Merger Agreement under specified circumstances, NewLink or Lumos, as applicable, may be required to pay the other party a termination fee of \$2.0 million.

The Merger Agreement contemplates that we will also seek approval from our stockholders to effect a reverse stock split with the split ratio to be mutually agreed to by the Company and Lumos immediately prior to the Effective Time. The Merger is expected to close in the first quarter of 2020. The special meeting of stockholders will be held on March 17, 2020.

## **Planned Future Operations**

We intend to continue to maximize stockholder interests with a goal of returning value to our stockholders. After the consummation of the Merger, the combined company expects to focus its efforts on the development of Lumos' sole product candidate, LUM-201 (ibutamoren), a potential oral therapy for pediatric growth hormone deficiency (PGHD) and other rare endocrine disorders. Our management does not intend to pursue further internal development of its existing pipeline upon consummation of the Merger, but will continue to evaluate our pipeline in light of the results of the DIPG cohort of our Phase 1b clinical trial for indoximod and may seek to identify potential partnerships and out-licensing opportunities.

If we do not receive stockholder approval for the Merger, the Merger will not occur and Lumos will not become our wholly-owned subsidiary. Subject to the risks mentioned above, should the proposed Merger not be approved by stockholders or not go forward for some other reason, we intend to continue to evaluate opportunities for strategic transactions. In parallel, we will continue to seek out-licensing, partnership, or other approaches to building value with our current pipeline.

## **Financial Overview**

### ***Revenues***

We have never earned revenue from commercial sales of any of our product candidates. We generated revenues of \$936,000 for the year ended December 31, 2019 which consisted of revenues earned under the license and collaboration agreement with Merck entered into during 2014 and the payment from Ellipses for the NLG207 inventory stock and related materials.

In the future, we may generate revenue from a variety of sources, including license fees, milestones, research and development and royalty payments in connection with strategic collaborations or government contracts, licenses of our intellectual property, or product sales if we develop products which are approved for sale. We expect that any revenue we generate will fluctuate from quarter to quarter as a result of the timing and amount of license fees, research and development reimbursements, milestone and other payments we may receive under potential strategic collaborations, and the amount and timing of payments we may receive upon the sale of any products, if approved, to the extent any are successfully commercialized. We do not expect to generate revenue from product sales for several years, if ever. If we fail to complete the development of our product candidates in a timely manner or to obtain regulatory approval for them, our ability to generate future revenue, and our results of operations and financial position, would be materially adversely affected.

### ***Research and Development Expenses***

Research and development expenses consist of expenses incurred in connection with the discovery and development of our product candidates. These expenses consist primarily of:

- employee-related expenses, which include salaries, bonuses, benefits and share-based compensation;
- the cost of acquiring and manufacturing clinical trial materials;
- expenses incurred under agreements with contract research organizations, investigative sites and consultants that conduct our clinical trials and a substantial portion of our preclinical studies;
- facilities, depreciation of fixed assets and other allocated expenses, which include direct and allocated expenses for rent and maintenance of research facilities and equipment;
- license fees for and milestone payments related to in-licensed products and technology; and
- costs associated with non-clinical activities and regulatory approvals.

We expense research and development expenses as incurred.

Product candidates in late stages of clinical development generally have higher development costs than those in earlier stages of clinical development, primarily due to the increased size, duration and complexity of later stage clinical trials. Currently, we have significantly reduced our clinical development expenses to preserve cash for future strategic opportunities. Once a strategic opportunity moves forward, such as the proposed Merger with Lumos, we expect our clinical development costs to increase in proportion to the development plan. For the years ended December 31, 2019, 2018 and 2017 we incurred \$22.2 million, \$45.7 million, and \$69.9 million, respectively, in research and development expenses.

The following table summarizes our research and development expenses by category of costs for the periods indicated:

**Research and Development Expenses by Category**  
(In thousands)

	Years Ended December 31,		
	2019	2018	2017
Compensation	\$ 10,591	\$ 16,099	\$ 18,873
Equipment, supplies and occupancy	3,018	3,244	6,246
Outside clinical and other	8,596	26,351	44,747
Total research and development expenses	<u>\$ 22,205</u>	<u>\$ 45,694</u>	<u>\$ 69,866</u>

As we do not plan to pursue further development of our current clinical assets through Company sponsored trials at this time, future expenditures related to our current clinical assets are expected to be greatly reduced.

**General and Administrative Expenses**

General and administrative expenses consist principally of salaries and related costs for personnel in executive, finance, business development, information technology, legal and human resources functions. Other general and administrative expenses include facility costs not otherwise associated with research and development expenses, intellectual property prosecution and defense costs and professional fees for legal, consulting, auditing and tax services.

**Interest Income and Interest Expense**

Interest income consists of interest earned on our cash and cash equivalents and certificates of deposit. The primary objective of our investment policy is capital preservation. We expect our interest income to decrease as we invest in our clinical development activities and operations.

Interest expense consists primarily of interest, amortization of debt discount and amortization of deferred financing costs associated with our notes payable and obligations under capital leases.

**Restructuring Charges**

On September 30, 2019, we adopted a restructuring plan to reduce our headcount by approximately 60% as compared to June 30, 2019, which consisted primarily of clinical and research and development staff, and made several changes to senior leadership in order to conserve resources. The objective of the restructuring was to reduce the Company's operating expenses and align the Company's personnel with the anticipated needs of the Company. The severance charges include changes to the Company's management team.

Affected employees were eligible to receive severance payments, outplacement services, accelerated vesting of a portion of their stock options, an extension to the post-termination exercise period for their stock options and Company-paid COBRA coverage. In each case, such severance benefits were contingent upon an affected employee's execution (and non-revocation) of a separation agreement, which included a general release of claims against the Company. The Company expects that the workforce reduction and the change in the management team will decrease the Company's cash payroll expense by approximately \$5.0-\$6.0 million annually.

We incurred aggregate restructuring charges of approximately \$5.6 million, which were recorded in the third and fourth quarters of 2019, related to one-time termination severance payments and other employee-related costs, excluding any amounts related to stock-based compensation expense for the acceleration of stock options and the extension of post-termination stock option exercise periods.

In July 2018, we completed an organizational review of our clinical programs and reduced our headcount by approximately 30% as compared to June 30, 2018 and made several changes to senior leadership effective July 26, 2018 in order to conserve resources.

In July 2017, we undertook an organizational realignment to refocus our clinical development efforts and align our resources to focus on our highest value opportunities. The restructuring activities included a reduction of our workforce by approximately 50%, which consisted primarily of clinical and research and development staff, as well as stopping additional research on the Zika virus.

Restructuring charges of \$5.6 million, \$1.3 million, and \$1.7 million were recorded during the years ended December 31, 2019, 2018 and 2017, respectively, relating to these reorganizations. Refer to Note 13 for more information.

### ***Income Tax Benefit and Expense***

For the years ended December 31, 2019, 2018 and 2017, we had an income tax expense of \$12,000 and a benefit of \$7.0 million and \$559,000, respectively. Income tax for the year ended December 31, 2019 differs from the amount that would be expected after applying the statutory U.S. federal income tax rate primarily due to recording a full valuation allowance on net operating losses generated in recent years. In addition, for the year ended December 31, 2018 the tax differs from the statutory U.S. federal tax rate due to amendments filed for certain states for the years ending December 31, 2014 and 2015.

The valuation allowance for deferred tax assets as of December 31, 2019 and 2018 was \$59.5 million and \$62.0 million, respectively. The net change in the total valuation allowance for the year ended December 31, 2019 was a decrease of \$2.5 million. In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the scheduled reversal of deferred tax liabilities, projected taxable income, and tax planning strategies in making this assessment. On December 22, 2017, the U.S. government enacted comprehensive tax legislation commonly referred to as the Tax Act. The Tax Act repealed the corporate AMT for years beginning January 1, 2018 and provides that existing AMT credit carryovers are partially refundable beginning in 2018 as an offset to a taxable liability, with full refunds beginning in 2021. We have approximately \$69,000 of AMT credit carryovers remaining that are expected to be fully refunded by 2021. The Tax Act had no other material impacts to the consolidated financial statements upon enactment. For all other net deferred tax assets as of December 31, 2019 and 2018, a full valuation allowance has been established due to the uncertainty of future recoverability.

As of December 31, 2019 and December 31, 2018, we had federal net operating loss carryforwards of \$105.4 million and \$74.5 million and federal research credit carryforwards of \$29.0 million and \$28.3 million, respectively. Sections 382 and 383 of the Code limit a corporation's ability to utilize its net operating loss carryforwards and certain other tax attributes (including research credits) to offset any future taxable income or tax if the corporation experiences a cumulative ownership change of more than 50% over any rolling three-year period. State net operating loss carryforwards (and certain other tax attributes) may be similarly limited. An ownership change can therefore result in significantly greater tax liabilities than a corporation would incur in the absence of such a change and any increased liabilities could adversely affect the corporation's business, results of operations, financial condition and cash flow.

Based on analysis, we believe that, from our inception through June 30, 2019, we experienced Section 382 ownership changes in September 2001 and March 2003 and one of our subsidiaries experienced Section 382 ownership changes in January 2006 and January 2011. These ownership changes limited our ability to utilize federal net operating loss carryforwards (and certain other tax attributes) that accrued prior to the respective ownership changes of us and one of our subsidiaries.

Ownership changes, including the impact of the potential Lumos Merger, may occur in the future as a result of events over which we will have little or no control, including purchases and sales of our equity by our 5% stockholders, the emergence of new 5% stockholders, additional equity offerings or certain changes in the ownership of any of our 5% stockholders.

### **Critical Accounting Policies and Significant Judgments and Estimates**

We have prepared our consolidated financial statements in accordance with U.S. GAAP. Our preparation of these financial statements requires us to make estimates, assumptions and judgments that affect the reported amounts of assets, liabilities, expenses and related disclosures at the date of the financial statements, as well as revenues and expenses during the reporting periods. We evaluate our estimates and judgments on an ongoing basis. We base our estimates on historical experience and on 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 readily apparent from other sources. Actual results could therefore differ materially from these estimates under different assumptions or conditions. We have reviewed our critical accounting policies and estimates with the Audit Committee of our Board of Directors.

While our significant accounting policies are described in more detail in Note 2 to our audited consolidated financial statements included later in this annual report, we believe the following accounting policies to be critical in the preparation of our financial statements.

### ***Expenses Accrued Under Contractual Arrangements with Third Parties; Accrued Clinical Expenses***

As part of the process of preparing our financial statements, we are required to estimate our accrued expenses. This process involves reviewing open contracts and purchase orders, communicating with our applicable personnel to identify services that have been performed on our behalf and estimating the level of service performed and the associated cost incurred for the service when we have not yet been invoiced or otherwise notified of actual cost. The majority of our service providers invoice us monthly in arrears for services performed. We make estimates of our accrued expenses as of each balance sheet date in our financial statements based on facts and circumstances known to us at that time. We periodically confirm the accuracy of our estimates with the service providers and make adjustments if necessary.

We base our expenses related to clinical trials on our estimates of the services received and efforts expended pursuant to contracts with multiple research institutions and contract research organizations that conduct and manage clinical trials on our behalf. The financial terms of these agreements are subject to negotiation, vary from contract to contract and may result in uneven payment flows. Payments under some of these contracts depend on factors such as the successful enrollment of patients and the completion of clinical trial milestones. In accruing expenses, we estimate the time period over which services will be performed and the level of effort to be expended in each period, which is based on an established protocol specific to each clinical trial. If the actual timing of the performance of services or the level of effort varies from our estimate, we adjust the accrual accordingly. Although we do not expect our estimates to be materially different from amounts actually incurred, our understanding of the status and timing of services performed relative to the actual status and timing of services performed may vary and may result in us reporting amounts that are too high or too low in any particular period.

### ***Share-Based Compensation***

We are required to estimate the grant-date fair value of stock options, stock awards and restricted stock issued to employees and recognize this cost over the period these awards vest. We estimate the fair value of each stock option granted using the Black-Scholes option pricing model. The Black-Scholes model requires the input of assumptions, including the expected stock price volatility, the calculation of expected term and the fair value of the underlying common stock on the date of grant, among other inputs. Generally, we have issued stock options that vest over time. For these awards, we record compensation cost on a straight-line basis over the vesting period. Historically, we have issued awards that vest either monthly or vest 25% on the first anniversary date of issuance with the remaining options vesting ratably over the next 36 months, or as determined by the Board of Directors at the time of grant. On June 20, 2019, the Company commenced an option exchange program (Option Exchange) for its officers and employees to exchange eligible stock options to purchase up to an aggregate of 5,849,059 shares of the Company's common stock that had been granted to eligible holders, for a lesser number of new stock options with a lower exercise price. Stock options granted prior to December 31, 2018 with an exercise price equal to or greater than \$2.97 and held by eligible holders in continuous service through the termination of the Option Exchange were eligible for exchange in the Option Exchange. Under the Option Exchange, the new awards granted will vest in equal annual amounts over either two or three years, depending on whether the tendered eligible option was vested as of the exchange date. We calculate the fair value of the award on the grant date, which is the date the award is authorized by the Board of Directors or Chief Executive Officer and the employee has an understanding of the terms of the award.

The fair value of restricted stock units (RSUs) are subject to cliff vesting are recognized as compensation expense over the requisite service period using the straight line attribution method, and the fair value of RSUs that are subject to graded vesting are recognized as compensation expense over the requisite service period using the accelerated attribution method. The fair value of performance share units are recognized as compensation expense beginning at the time in which the performance conditions are deemed probable of achievement, over the remaining requisite service period.

We recorded noncash share-based compensation expense for employee and nonemployee stock options and restricted stock awards of \$6.7 million, \$17.1 million and \$18.5 million during 2019, 2018 and 2017, respectively. As of December 31, 2019, the total compensation cost related to unvested option awards and restricted stock awards not yet recognized was \$2.5 million and \$26,000, respectively, and the weighted average period over which the expenses are expected to be recognized are 2.7 years and four days, respectively. We expect to continue to grant stock options and restricted stock awards in the future, which will increase our share-based compensation expense in future periods. If any of the assumptions used in the Black-Scholes model change significantly, share-based compensation expense for new awards or awards to nonemployees may differ materially in the future from that recorded in the current period for awards previously granted.

The following table summarizes our assumptions used in the Black-Scholes model for option grants during the last three years:

### Black-Scholes Model Assumptions

	Years Ended December 31,		
	2019	2018	2017
Exercise price	\$1.50-\$1.80	\$2.27-\$8.56	\$6.75-\$23.09
Risk-free interest rate	1.77%-2.67%	2.61%-3.02%	1.91%-2.22%
Expected dividend yield	—	—	—
Expected volatility	77.0%-86.3%	76.2%-79.3%	68.9%-76.9%
Expected term (in years)	4.0-7.7	4.0-7.9	1.2-7.8

*Exercise Price.* We use the quoted market price as listed on the public exchange on the date of grant.

*Expected Volatility.* We use our historical stock price volatility. The volatility is calculated over a period of time commensurate with the expected term for the options granted.

*Expected Term (in Years).* The expected term of a stock option is the period of time for which the option is expected to be outstanding. We use historical exercise and option expiration data to estimate the expected term for the Black-Scholes grant-date valuation.

*Risk-Free Interest Rate.* We use the average yield on current U.S. Treasury instruments with terms that approximate the expected term of the stock options being valued.

*Expected Dividend Yield.* The expected dividend yield for all of our stock option grants is 0%, as we have not declared a cash dividend since inception, and do not expect to do so in the foreseeable future.

*Forfeitures.* The share-based compensation expense recognized has been reduced for estimated forfeitures. The estimated forfeiture rate is based on historical experience of our option plan, which we expect to continue at the current level, and any adjustments in the forfeiture rate in the future will result in a cumulative adjustment in the period that this estimate is changed. Ultimately, the total compensation expense recognized for any given share-based award over its vesting period will only be for those shares that actually vest.

*Common Stock Fair Value.* The fair value of the common stock is the quoted market price as listed on the NASDAQ Global Market.

Based on the per share closing price of our common stock on the NASDAQ Global Market of \$2.53 per share on December 31, 2019, the intrinsic value of stock options outstanding at December 31, 2019, was \$2.0 million, all of which related to stock options that were vested at that date.

### Revenue Recognition

Revenues in 2019 and 2018 were recognized under Topic 606 when control of the promised goods or services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those goods or services. Prior to 2019, we received payments from government entities under our grants and contracts with the DOD and the HHS. These agreements provide us cost reimbursement plus a percentage for certain types of expenditures in return for research and development activities over a contractually defined period. Grant revenues were recognized over time and measured using the input method. We use labor costs and subcontractor fees as inputs to measure progress towards satisfying its performance obligations under these agreements. This is the most faithful depiction of the transfer of goods and services to the government entities due to the government entities' control over the research and development activities. Under this method, we recognize revenue generally in the period during which the related costs we incurred, in an amount that reflects the consideration we expect to be entitled to in exchange for those goods or services.

See Note 7, License and Research Collaboration Agreements, to the accompanying audited consolidated financial statements included elsewhere in this Annual Report on Form 10-K for further information.

## **Income Taxes**

Income taxes are recorded for the amount of taxes payable for the current year and include deferred tax assets and liabilities for the effect of temporary differences between the financial and tax basis of recorded assets and liabilities using enacted tax rates. Deferred tax assets are reduced by a valuation allowance if it is more likely than not that some portion or all of the deferred tax assets will not be realized. Income tax was an expense of \$12,000 of in 2019. A valuation allowance of \$59.5 million as of December 31, 2019 offsets our net deferred tax assets.

The Company considers accounting for income taxes critical to our operations because management is required to make subjective judgments in developing our provision for income taxes, including the determination of deferred tax assets and liabilities, any valuation allowances that may be required against deferred tax assets, and reserves for uncertain tax positions. The Company does not anticipate the liability for uncertain tax positions as of December 31, 2019 to significantly change in the next 12 months.

## **Results of Operations**

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

*Revenues.* Revenues for the year ended December 31, 2019 were \$936,000, as compared to \$12.5 million in 2018, a decrease of \$11.5 million. Grant revenue decreased from \$11.3 million in 2018 to no grant revenues for the year ended December 31, 2019 as a result of transferring our obligation as prime contractor on the agreements to Merck in 2018. Licensing and collaboration revenues decreased by \$270,000 due to higher revenues recognized under the Merck Agreement in 2018 as compared to 2019.

*Research and Development Expenses.* Research and development expenses for the year ended December 31, 2019 were \$22.2 million, decreasing from \$45.7 million for the same period in 2018. The \$23.5 million decrease was due primarily to reductions of \$12.6 million in contract research and manufacturing expense primarily due to transferring our obligation as prime contractor to Merck in 2018, \$7.4 million in personnel-related expense due to our workforce reductions, \$4.0 million in clinical trial costs, \$1.0 million in legal expense, and \$400,000 in supplies and equipment, offset by increases of \$1.8 million in restructuring expenses, and \$100,000 in technology and licensing.

*General and Administrative Expenses.* General and administrative expenses for the year ended December 31, 2019 were \$23.9 million, decreasing from \$29.2 million for the same period in 2018. The \$5.4 million decrease was due to a reduction of \$7.6 million in personnel-related spend primarily due to our workforce reductions, a \$1.8 million in supplies expense, offset by increases of \$2.4 million in restructuring expense, and \$1.6 million in legal expense.

*Income Tax Benefit/Expense.* Income tax for the year ended December 31, 2019 was an expense of \$12,000 compared to an income tax benefit of \$7.0 million for the same period in 2018. The benefit in 2018 is primarily due to amendments filed in 2018 for certain states for the years ending December 31, 2014 and 2015 as compared to the expense in 2019 recorded for expected tax payments owed in certain states.

*Net Loss.* Net loss for the year ended December 31, 2019 was \$43.0 million, a decrease from the net loss of \$53.6 million for the same period in 2018 primarily due to the decrease in operating expenses, offset by the decrease in revenues and the decrease in the income tax benefit. The diluted average shares outstanding for 2019 were 37.3 million, resulting in a diluted loss per share of \$1.15, as compared to 37.2 million diluted average shares outstanding and a \$1.44 diluted loss per share for 2018.

### ***Comparison of the Years Ended December 31, 2018 and 2017***

*Revenues.* Revenues for the year ended December 31, 2018 were \$12.5 million, as compared to \$28.7 million in 2017, a decrease of \$16.2 million. Grant revenue decreased by \$17.1 million in 2018 due to a decrease in billings under the government contracts as a result of transferring our obligation as prime contractor on the agreements to Merck in 2018. Licensing and collaboration revenues increased by \$816,000 due to higher revenues recognized under the Merck Agreement in 2018.

*Research and Development Expenses.* Research and development expenses for the year ended December 31, 2018 were \$45.7 million, decreasing from \$69.9 million for the same period in 2017. The \$24.2 million decrease was due primarily to reductions of \$15.2 million in contract research and manufacturing expense, \$3.0 million personnel-related expense, \$3.3

million in supplies and equipment, \$1.8 million in clinical trial costs, \$1.3 million in technology and licensing, and a reduction in restructuring expense of \$100,000, offset by a \$500,000 increase in consulting and other costs.

*General and Administrative Expenses.* General and administrative expenses for the year ended December 31, 2018 were \$29.2 million, decreasing from \$31.7 million for the same period in 2017. The \$2.5 million decrease was due to a \$2.5 million reduction in personnel-related spend, a \$550,000 reduction in consulting and other costs, and a reduction in restructuring expenses of \$300,000, offset by an \$850,000 increase in supplies and other expense.

*Income Tax Benefit/Expense.* Income tax benefit for the year ended December 31, 2018 was \$7.0 million, compared to an income tax benefit of \$559,000 for the same period in 2017. The increase in the benefit is primarily due to amendments filed in 2018 for certain states for the years ending December 31, 2014 and 2015.

*Net Loss.* Net loss for the year ended December 31, 2018 was \$53.6 million, a decrease from net loss of \$72.0 million for the same period in 2017, primarily due to the decrease in operating expenses, the increase in the income tax benefit, offset by the decrease in revenues. The diluted average shares outstanding for 2018 were 37.2 million, resulting in a diluted loss per share of \$1.44, as compared to 31.3 million average shares outstanding and a \$2.30 diluted loss per share for 2017.

## Liquidity and Capital Resources

Before our initial public offering (IPO) in 2011 we funded our operations principally through the private placement of equity securities, debt financing and interest income. We received aggregate proceeds, net of offering costs, of \$76.3 million from the issuance of convertible preferred stock from inception through 2011. Since our IPO, in 2011, we have funded our operations principally through public offerings of common stock and payments under our collaboration agreements and government contracts. In our IPO, we received net proceeds, of \$37.6 million. In February 2013 we received net proceeds of \$49.0 million in an underwritten public offering. Between September 2013 and March 2015, we raised a total of \$58.7 million in net proceeds under an ATM Offering with Cantor Fitzgerald & Co. (Cantor). We launched another ATM offering with Cantor in June 2017 under which we have sold 1,940,656 shares of the Company's common stock for aggregate net proceeds of \$19.3 million after commissions of \$398,000 paid to Cantor and other costs of \$163,000 through December 31, 2017 and no shares thereafter.

On October 6, 2017, we successfully raised proceeds of \$55.2 million, net of offering costs of \$3.7 million, from the issuance of 5,750,000 shares of our common stock in an underwritten public offering.

The following table sets forth the primary sources and uses of cash for each of the periods set forth below:

### Sources and Uses of Cash (In thousands)

	Years Ended December 31,		
	2019	2018	2017
Net cash used in operating activities	\$ (30,207)	\$ (37,939)	\$ (48,281)
Net cash provided by (used in) investing activities	77	117	211
Net cash (used in) provided by financing activities	(59)	(148)	75,288
Net (decrease) increase in cash and cash equivalents	\$ (30,189)	\$ (37,970)	\$ 27,218

For the year ended December 31, 2019, we used cash of \$30.2 million in our operating activities. Net cash used in operating activities decreased \$7.7 million during 2019 as compared to 2018, primarily due to the \$10.6 million decrease in net loss and offset by the decrease in non-cash items of \$2.9 million.

For the year ended December 31, 2018, we used cash of \$37.9 million in our operating activities. Net cash used in operating activities decreased \$10.3 million during 2018 as compared to 2017, primarily due to the \$18.4 million decrease in net loss and the \$8.1 million increase in working capital.

For the year ended December 31, 2017, the sources and uses of cash was driven primarily by the decrease in licensing and collaboration revenues and decrease in income tax expense, offset by increases in operating expenses.

For the years ended December 31, 2019, 2018 and 2017, our investing activities generated cash of \$77,000, \$117,000, and \$211,000, respectively. The cash provided by investing activities in the year ended December 31, 2019 was due to the proceeds received from sales of property and equipment of \$77,000. The cash provided by investing activities in the year ended

December 31, 2018 was due to the proceeds received from sales of property and equipment of \$124,000, offset by \$7,000 in purchases of property and equipment. The cash provided by investing activities in the year ended December 31, 2017 was received from sales of property and equipment of \$254,000 offset by \$43,000 in purchases of property and equipment.

For the years ended December 31, 2019, 2018 and 2017, our financing activities used cash of \$59,000, \$148,000 and provided cash of \$75.3 million, respectively. The cash used in financing activities in the year ended December 31, 2019 was primarily due to the repurchase of common stock of \$36,000 and payments on notes payable of \$61,000, and offset by the sale and issuance of common stock for net proceeds of \$38,000. The cash used by financing activities in the year ended December 31, 2018 was primarily due to the repurchase of common stock of \$275,000, and payments on finance lease obligations and notes payable of \$167,000, offset by the sale and issuance of common stock of \$294,000. The cash provided by financing activities in the year ended December 31, 2017 was primarily due to the sale and issuance of common stock for net proceeds of \$75.8 million, offset by the repurchase of common stock of \$289,000 and net payments on long-term obligations of \$246,000.

### ***Obligations under our Royalty and Loan Agreements***

#### *March 2005 and March 2012 Iowa Economic Development Authority Loan*

In March 2005, we entered into a \$6.0 million forgivable loan agreement with the Iowa Department of Economic Development (IDED). Under the agreement, in the absence of default, there were no principal or interest payments due until the completion date for the project. The agreement provided us with financial assistance for research and product development activities at our Iowa State University Research Park facility. Additionally, under the agreement, we were obligated to pay a minimum of 0.25% royalties on all gross revenues of any products that we bring to market with a cumulative maximum royalty amount due of \$3.2 million. Substantially all of our assets were pledged to secure this loan. This loan was converted into a royalty obligation under the terms of a settlement agreement entered into on March 26, 2012 (the IEDA Agreement) with the Iowa Economic Development Authority (the IEDA) as successor in interest to the IDED.

#### *March 2012 IEDA Royalty Obligation*

Under the terms of the IEDA Agreement, the forgivable loan agreement between us and IEDA (as successor to IDED) was terminated and we were thereby released from the forgivable loan agreement's job creation, project expenditure, royalty and other requirements in exchange for agreeing to pay a royalty of 0.50% on all gross revenues of any products that we bring to market, with a cumulative maximum royalty obligation due of \$6.8 million. Additionally, under the IEDA Agreement, the IEDA released its security interest in our assets. We are obligated to maintain our business substantially in the State of Iowa until the royalty obligation under the IEDA Agreement is satisfied.

#### *2009 and 2012 Iowa State University Research Park Loans*

In 2009, we executed a promissory note in favor of Iowa State University Research Park (ISURP) in an original principal amount of \$800,000, which was due in monthly installments through March 2018. The note represents amounts owed by us to ISURP for certain improvements that were made to facilities we lease from ISURP. The principal and interest owed under the note is amortized over an eight-year period. Interest is payable monthly under this promissory note, initially at a rate of 3.0% per annum and increasing to 5.0% per annum after five years from the date the improvements were completed. ISURP may accelerate all amounts owed under the note upon an event of default, including our uncured material breach of the terms of the note or the lease or upon early termination of the lease. In the event of a default under the note, amounts owed under the note will bear interest at 8.0% per annum. No balance was outstanding under the 2009 note at December 31, 2019 and December 31, 2018, respectively.

In 2012, we executed a promissory note in favor of ISURP in an original principal amount of \$456,000, which is due in monthly installments through September 2020. The note represents amounts owed by us to ISURP for certain additional improvements that were made to facilities we lease from ISURP. The principal and interest owed under the note is amortized over an eight-year period. Interest is payable monthly under this promissory note, initially at a rate of 3.0% per annum and increasing to 5.0% per annum after five years from the date the improvements were completed. ISURP may accelerate all amounts owed under the note upon an event of default, including our uncured material breach of the terms of the note or the lease or upon early termination of the lease. In the event of a default under the note, amounts owed under the note will bear interest at 8.0% per annum. The balance outstanding under the 2012 note was \$43,000 and \$104,000 at December 31, 2019 and December 31, 2018, respectively.

## Operating Capital Requirements

Our future operating requirements will depend on the results of the stockholder vote of the proposed Merger with Lumos. Subsequent to the consummation of the Merger, the combined company expects to focus its efforts on the development of Lumos' sole product candidate, LUM-201 (ibutamoren), a potential oral therapy for pediatric growth hormone deficiency (PGHD) and other rare endocrine disorders. Our management does not intend to pursue further internal development of our existing pipeline upon consummation of the Merger, but will continue to evaluate our pipeline in light of the results of the DIPG cohort of our Phase 1b clinical trial for indoximod and may seek to identify potential partnerships and out-licensing opportunities. We anticipate that we will continue to generate operating losses for the foreseeable future as we incur expenses to advance the clinical trial program for LUM-201, develop our pipeline and pursue regulatory approval of our product candidates.

If we do not receive stockholder approval for the Merger, the Merger will not occur and Lumos will not become our wholly-owned subsidiary. Should the proposed Merger not be approved by stockholders or not go forward for some other reason, the Company intends to continue to evaluate opportunities for strategic transactions. In parallel, we will continue to seek out-licensing, partnership, or other approaches to building value with our current pipeline.

We may seek to sell additional equity or debt securities or obtain a credit facility if our available cash and cash equivalents are insufficient to satisfy our liquidity requirements or if we develop additional opportunities to do so. The sale of additional equity and debt securities may result in additional dilution to our stockholders. If we raise additional funds through the issuance of debt securities or preferred stock, these securities could have rights senior to those of our common stock and could contain covenants that would restrict our operations. We may require additional capital beyond our currently forecasted amounts. Any such required additional capital may not be available on reasonable terms, if at all. If we were unable to obtain additional financing, we may be required to reduce the scope of, delay or eliminate some or all of our planned research, development and commercialization activities, which could harm our business.

Because of the numerous risks and uncertainties associated with research, development and commercialization of biopharmaceutical products, we are unable to estimate the exact amounts of our working capital requirements. Our future funding requirements will depend on many factors, including, but not limited to:

- the scope, progress, results and costs of clinical trials for our product candidates, and discovery and development activities related to new product candidates;
- the timing of, and the costs involved in, obtaining regulatory approvals for our product candidates;
- the cost of commercialization activities if any of our product candidates are approved for sale, including marketing, sales, facilities, and distribution costs;
- the cost of manufacturing our product candidates and any products we commercialize;
- our ability to establish and maintain strategic collaborations, licensing or other arrangements and the financial terms of such agreements;
- whether, and to what extent, we are required to repay our outstanding government provided loans;
- the costs involved in preparing, filing, prosecuting, maintaining, defending and enforcing patent claims, 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.

## Contractual Obligations and Commitments

The following table summarizes our contractual obligations at December 31, 2019:

	Contractual Obligations Due (In thousands)				
	Total	Less than 1 Year	1 to 3 Years	3 to 5 Years	More than 5 Years
Short and long-term debt (including interest) (1)	\$ 6,050	\$ 50	\$ —	\$ —	\$ 6,000
Operating lease obligations	732	599	133	—	—
<b>Total contractual cash obligations</b>	<b>\$ 6,782</b>	<b>\$ 649</b>	<b>\$ 133</b>	<b>\$ —</b>	<b>\$ 6,000</b>

(1) Short and long-term debt includes an accrued royalty obligation of \$6.0 million for which the timing of payment is uncertain. See section "March 2012 IEDA Royalty Obligation" above.

Under the license agreements described below under the heading “Financial Obligations Related to Licensing and Development—In-Licensing Agreements” we are obligated to make potential milestone payments as listed in the following table. These obligations are contingent upon achieving the applicable milestone event, the timing of which cannot presently be determined.

Licensor	Aggregate potential milestone payments
Augusta University Research Institute under AURI IDO Agreement	\$2.8 million per licensed product

We incurred expense of approximately \$277,000, \$32,000, and \$1.4 million, under all of the in-licensing agreements for the years ended December 31, 2019, 2018, and 2017, respectively.

## Financial Obligations Related to Licensing and Development

### In-Licensing Agreements

We are subject to a number of licensing agreements with respect to certain of the technologies that underlie our intellectual property. Unless otherwise noted, these agreements typically provide that we have exclusive rights to the use and sublicensing of the technologies in question for the duration of the intellectual property patent protection in question, subject to us meeting our financial and other contractual obligations under the agreements. Certain of the key licensing agreements with significant financial obligations include the following:

*Augusta University Research Institute- IDO.* We are a party to the AURI IDO Agreement with AURI which was formerly known as Georgia Regents Research Institute, the Georgia Health Sciences University Research Institute, Inc. and the Medical College of Georgia Research Institute. The AURI IDO Agreement was amended on March 28, 2006, April 27, 2006, February 13, 2007, July 12, 2013, July 10, 2014 and March 15, 2016. The AURI IDO Agreement grants us, including our affiliates, an exclusive, worldwide license, under specified AURI patent rights and related technology to make, have made, use, import, sell and offer for sale products that are covered by licensed patent rights or incorporates or uses licensed technology in all medical applications.

In consideration of such license grant, we have paid AURI specified license fees (including issuing shares of our common stock) and have made certain investments toward the further development of licensed products within the specified time periods, and we are obligated to pay to AURI annual license maintenance fees, reimbursement of patent prosecution costs, potential milestone payments in an aggregate amount up to approximately \$2.8 million per licensed product, and royalties as a single-digit percentage of net sales of the licensed products, subject to minimum royalty payments and royalty rates depending on the type of license product. In addition, if we grant a sublicense under the license granted by AURI, we must pay to AURI a percentage of the consideration we receive from the sublicensee.

*The Genentech Agreement.* In October 2014, we entered into the Genentech Agreement for the development and commercialization of NLG919, our clinical stage IDO pathway inhibitor, and a research collaboration for the discovery of next generation IDO/TDO inhibitors to be developed and commercialized under the Genentech Agreement. On June 6, 2017, we received a formal notice of Genentech’s intent to terminate the Genentech Agreement with respect to NLG919. As part of the partial termination, worldwide rights to NLG919 reverted to us, and Genentech granted to us an exclusive, royalty-bearing license under certain Genentech intellectual property to develop and commercialize NLG919. If NLG919 is commercialized, we will be obligated to pay to Genentech royalties as a low single-digit percentage of net sales of NLG919.

*Public Health Agency of Canada Agreement.* BPS is a party to the PHAC License. Under the terms of the PHAC License, BPS has a worldwide, personal, non-transferable, sole, revocable, royalty-bearing license under specified patent rights and know-how, for the development and commercialization of products directed to the prevention, prophylaxis and treatment of Ebola (Zaire), a rVSV based on VHF virus, and a worldwide, personal, non-transferable, non-exclusive, revocable, royalty-bearing license, under specified patent rights and know-how, for the development and commercialization of products directed to the prevention, prophylaxis and treatment of Ebola (Sudan), a VHF virus.

In consideration of the license grants, BPS must pay certain annual license maintenance fees, patent prosecution costs, potential milestone payments to Canada. In December 2019, BPS paid a milestone payment of \$250,000 to PHAC upon approval by the FDA of the Ebola vaccine. BPS must pay royalties as a low single-digit percentage of the sales price of the licensed products sold by BPS, its affiliates or sublicensees in countries outside of Africa and GAVI eligible countries, which royalty rate varies depending on whether additional technology licenses are required to sell the licensed product, and whether

the licensed product is covered by a valid claim of a patent licensed under the PHAC License. In addition to the milestones discussed above, BPS is required to pay to Canada a percentage in the low double digits of certain consideration BPS receives from Merck or any other sublicensee over specified thresholds. BPS is obligated to use commercially reasonable efforts to develop and market the licensed products.

### ***Collaborative Agreements with Medical Institutions***

We have entered into numerous agreements with various medical institutions for the performance of clinical trials for various products in the past. They typically require the payment of fees by us for the performance of the clinical trials and the maintenance of confidentiality as to the associated technology. We may enter into additional agreements in the future.

### **Patents and Trademarks**

As noted above, we presently have an extensive portfolio of patents and patent applications (and certain trademark registrations) with the United States Patent and Trademark Office. During the years ended December 31, 2019, 2018 and 2017, we incurred expenses related to the filing, maintenance, and initiation of our patent portfolio of \$696,000, \$828,000 and \$411,000, respectively, for a decrease of 16% for the 2019 period as compared to the same period in 2018, and an increase of 100% for the 2018 period as compared to the same period in 2017. Decreased costs in 2019 compared to 2018 were due to decreased activity on new filings and pending cases. Increased costs in 2018 compared to 2017 were due to increased activity on new filings and pending cases.

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

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

### **Recent Accounting Pronouncements**

In February 2016, the FASB issued ASU No. 2016-02 (Topic 842), Leases, to improve financial reporting for leasing transactions. The Company adopted the standard on January 1, 2019 using the modified retrospective method, as required, applying the new standard to all leases existing as of the date of initial application. The Company has elected that the date of the initial application, January 1, 2019, will be the effective date. Consequently, financial information is not updated and the disclosures required under the new standard are not provided for dates and periods before January 1, 2019. The Company elected the "package of practical expedients", which permits the Company not to reassess under the new standard its prior conclusions about lease identification, lease classification and initial direct costs. The Company did not elect to apply the use-of-hindsight or the practical expedient pertaining to land easements; as the latter is not applicable to the Company.

## **Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We are exposed to market risk related to changes in interest rates. As of December 31, 2019 and December 31, 2018, we had cash and cash equivalents of \$90.5 million and \$120.7 million, respectively, consisting of checking accounts and money market funds. Our primary exposure to market risk is interest rate sensitivity, which is affected by changes in the general level of U.S. interest rates, particularly because our investments are in short-term marketable securities. Due to the short-term duration of our investment portfolio and the low risk profile of our investments, an immediate 10% change in interest rates would not have a material effect on the fair market value of our portfolio. We expect to have the ability to hold our certificates of deposit until maturity, and therefore we would not expect our operating results or cash flows to be affected to any significant degree by the effect of a change in market interest rates on our investments. We do not currently have any auction rate securities.

Our long-term debt and our capital lease obligations bear interest at fixed rates. Any change in interest rates would have an immaterial (or no) impact on our financial statements.

## **Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

The report of KPMG LLP, our independent registered public accounting firm, the financial statements of us and our consolidated subsidiaries and the notes thereto are included beginning on page F-1.

## **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**

We carried out an evaluation required by the Exchange Act, under the supervision and with the participation of our chief executive officer and chief financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rule 13a-15(e) of the Exchange Act, as of December 31, 2019. Based on this evaluation, our chief executive officer and chief financial officer concluded that, as of December 31, 2019, our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the rules and forms of the SEC and to provide reasonable assurance that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosures.

### **Management's Report on Internal Control over Financial Reporting**

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rule 13a-15(f) of the Exchange Act. Management has assessed the effectiveness of our 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 (the COSO Framework). As a result of this assessment, management concluded that, as of December 31, 2019, our internal control over financial reporting was effective in providing 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 (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect our transactions and dispositions of our assets; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of the consolidated 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 (3) 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 consolidated 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.

### **Changes in Internal Control Over Financial Reporting**

There were no changes in our internal control over financial reporting during the fourth quarter of 2019 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

### **Limitations on Controls.**

Management does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent or detect all error and fraud. Any control system, no matter how well designed and operated, is based upon certain assumptions and can provide only reasonable, not absolute, assurance that its objectives will be met. Further, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all internal control issues and instances of fraud, if any, have been detected.

## **Item 9B. OTHER INFORMATION**

None.

**PART III****Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

The information required by this item concerning our directors and nominees is incorporated by reference to our definitive Proxy Statement for our 2020 Annual Meeting of Stockholders (the 2020 Proxy Statement).

**Item 11. EXECUTIVE COMPENSATION**

The information required by this item concerning the compensation of our directors and executive officers is incorporated by reference to the 2020 Proxy Statement.

**Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The information required by this item concerning securities authorized under our equity compensation plans and security ownership of certain beneficial owners is incorporated by reference to the 2020 Proxy Statement.

**Securities Authorized For Issuance Under Equity Compensation Plans**

We maintain our 2009 Equity Incentive Plan, 2010 Non-Employee Directors' Stock Award Plan and 2010 Employee Stock Purchase Plan, each of which was approved by the Company's security holders, pursuant to which we may grant equity awards to eligible persons.

The following table gives information about equity awards under the foregoing plans as of December 31, 2019:

Plan Category	Number of Securities to be Issued upon Exercise of Outstanding Options, Warrants and Rights	Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a))	
Equity compensation plans approved by security holders	3,511,950	\$5.06	7,528,224	(1)(2)
Equity compensation plans not approved by security holders	—	\$0.00	—	
<b>Total</b>	<b>3,511,950</b>	<b>\$5.06</b>	<b>7,528,224</b>	

(1) The 2009 Equity Incentive Plan incorporates an evergreen formula pursuant to which, on each January 1st, the aggregate number of shares reserved for issuance under the plan will increase by a number equal to 4% of the outstanding shares on December 31st of the preceding calendar year, or such lesser amount (or no shares) as determined by our Board. On May 9, 2019, the Company's stockholders approved an amendment to the 2009 Plan which, among other modifications, included decreasing the automatic annual "evergreen provision" from 4% to 3%, in accordance with which, on January 1 of each year, from 2020 to (and including) 2029, a number of shares of common stock in an amount equal to 3% of the total number of shares of common stock outstanding on December 31 of the preceding calendar year, or such lesser amount of shares (or no shares) approved by the Company's Board of Directors, was added or will be added to the shares reserved under the 2009 Plan.

(2) Of these shares, as of December 31, 2019, 7,506,956 shares remained available under the 2009 Equity Incentive Plan, zero shares remained available under the 2010 Non-Employee Directors' Stock Award Plan and 23,656 shares remained available under the 2010 Employee Stock Purchase Plan.

**Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information required by this item concerning transactions with related persons is incorporated by reference to the 2020 Proxy Statement.

**Item 14. PRINCIPAL ACCOUNTING FEES AND SERVICES**

The information required by this item concerning fees and services of accountants and auditors is incorporated by reference to the 2020 Proxy Statement.

**PART IV**

**Item 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES**

**Item 15(a)**

**(1) Financial Statements**

<a href="#">Report of Independent Registered Public Accounting Firm</a>	F-1
<a href="#">Consolidated Balance Sheets - as of December 31, 2019 and 2018</a>	F-3
<a href="#">Consolidated Statements of Operations - Years Ended December 31, 2019, 2018 and 2017</a>	F-4
<a href="#">Consolidated Statements of Equity - Years Ended December 31, 2019, 2018 and 2017</a>	F-5
<a href="#">Consolidated Statements of Cash Flows - Years Ended December 31, 2019, 2018 and 2017</a>	F-6
<a href="#">Notes to Consolidated Financial Statements</a>	F-7

**(2) Financial Statement Schedules**

Schedules have been omitted because of the absence of conditions under which they are required or because the required information is included in the financial statements or notes thereto beginning on page F-1 of this report.

**(3) Exhibits**

The following exhibits are filed with this form 10-K or incorporated herein by reference to the document set forth next to the exhibit listed below. Where so indicated, exhibits that were previously filed are incorporated by reference.

Exhibit Number	Description	Incorporated By Reference			Filed Herewith
		Form	Filing Date	Number	
2.1	<a href="#">Asset Purchase Agreement, dated March 19, 2017, between Bluelink Pharmaceuticals, Inc. and Cerulean Pharma, Inc.</a>	8-K	3/20/2017	2.1	
2.2	<a href="#">Agreement and Plan of Merger and Reorganization, dated September 30, 2019, by and among NewLink Genetics Corporation, Cyclone Merger Sub, Inc and Lumos Pharma, Inc.</a>	8-K	9/30/2019	2.1	
2.3	<a href="#">Amendment No. 1 to Agreement and Plan of Merger and Reorganization, dated November 19, 2019, by and among NewLink Genetics Corporation, Cyclone Merger Sub, Inc. and Lumos Pharma, Inc.</a>	8-K	11/20/2019	2.1	
2.4	<a href="#">Form of Support Agreement, by and between NewLink Genetics Corporation and its directors and officers and by and between NewLink Genetics Corporation and Stine Seed Farm, Inc.</a>	8-K	9/30/2019	2.2	
3.1	<a href="#">Amended and Restated Certificate of Incorporation filed on November 16, 2011</a>	8-K	11/18/2011	3.1	
3.2	<a href="#">Certificate of Amendment to Restated Certificate of Incorporation filed on May 10, 2013</a>	8-K	5/14/2013	3.1	
3.3	<a href="#">Amended and Restated Bylaws</a>	8-K	9/30/2019	3.1	
4.1	<a href="#">Form of the Registrant's Common Stock Certificate</a>	S-1/A	10/26/2011	4.1	
4.2	Reference is made to Exhibits 3.1, 3.2 and 3.3				
4.3	<a href="#">Amended and Restated Investor Rights Agreement by and between the Registrant and certain holders of the Registrant's capital stock dated as of December 1, 2010</a>	10-Q	5/10/2012	4.3	
4.4	<a href="#">Description of Securities</a>				X
10.1	† <a href="#">Form of Indemnity Agreement by and between the Registrant and its directors and executive officers</a>	S-1/A	11/8/2011	10.11	
10.2	† <a href="#">2000 Equity Incentive Plan</a>	S-1	12/21/2010	10.2	
10.3.1	† <a href="#">Form of Stock Option Agreement under 2000 Equity Incentive Plan</a>	S-1	12/21/2010	10.3	
10.3.2	† <a href="#">Form of Stock Option Grant Notice under 2000 Equity Incentive Plan</a>	S-1	12/21/2010	10.4	
10.3.3	† <a href="#">Form of Stock Bonus Agreement under 2000 Equity Incentive Plan</a>	S-1	12/21/2010	10.5	

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10.4	†	<a href="#">Amended and Restated 2009 Equity Incentive Plan</a>	S-1	12/21/2010	10.6
10.4.1	†	<a href="#">Form of Stock Option Agreement under 2009 Equity Incentive Plan</a>	S-1	12/21/2010	10.7
10.4.2	†	<a href="#">Form of Stock Option Grant Notice under 2009 Equity Incentive Plan</a>	S-1	12/21/2010	10.8
10.4.3	†	<a href="#">Form of Restricted Stock Unit Award Agreement under the 2009 Equity Incentive Plan, as amended</a>	10-Q	8/5/2014	10.6
10.4.4	†	<a href="#">Form of Restricted Stock Unit Grant Notice [Four Year Annual Vesting] under the 2009 Equity Incentive Plan, as amended</a>	10-Q	8/5/2014	10.7
10.4.5	†	<a href="#">Form of Restricted Stock Unit Grant Notice [Immediately Vested] under the 2009 Equity Incentive Plan, as amended</a>	10-Q	8/5/2014	10.8
10.5	†	<a href="#">2010 Employee Stock Purchase Plan</a>	8-K	5/14/2013	10.2
10.6	†	<a href="#">2010 Non-Employee Directors' Stock Award Plan, as amended</a>	10-Q	11/8/2016	10.2
10.6.1	†	<a href="#">Form of Restricted Stock Unit Award Agreement under the 2010 Non-Employee Directors' Stock Award Plan, as amended</a>	10-Q	8/5/2014	10.4
10.6.2	†	<a href="#">Form of Restricted Stock Unit Grant Notice under the 2010 Non-Employee Directors' Stock Award Plan, as amended</a>	10-Q	8/5/2014	10.5
10.7	*	<a href="#">License Agreement dated September 13, 2005 by and between the Registrant and Medical College of Georgia Research Institute, Inc.</a>	S-1/A	11/8/2011	10.46
10.7.1	*	<a href="#">Amendment to License Agreement dated April 27, 2006 by and between the Registrant and Medical College of Georgia Research Institute, Inc.</a>	S-1/A	11/8/2011	10.47
10.7.2	*	<a href="#">Amendment to License Agreement dated April 27, 2006 by and between the Registrant and Medical College of Georgia Research Institute, Inc.</a>	S-1/A	11/8/2011	10.48
10.7.3	*	<a href="#">Amendment to License Agreement dated February 13, 2007 by and between the Registrant and Medical College of Georgia Research Institute, Inc.</a>	S-1/A	11/8/2011	10.49
10.7.4	*	<a href="#">Amendment to License Agreement dated March 28, 2006 by and between the Registrant and Medical College of Georgia Research Institute, Inc.</a>	10-Q	11/10/2014	10.3
10.7.5	*	<a href="#">Amendment to License Agreement dated July 10, 2014 by and between the Registrant and Medical College of Georgia Research Institute, Inc.</a>	10-Q	11/10/2014	10.4
10.8		<a href="#">Lease dated September 30, 2009 by and between the Registrant and Iowa State University Research Park Corporation</a>	S-1	12/21/2010	10.53
10.9		<a href="#">Memorandum of Agreement dated November 14, 2011 by and between NewLink Genetics Corporation and Iowa State University Research Park Corporation</a>	8-K	11/18/2011	10.1
10.10		<a href="#">Promissory Note executed in 2009 by and between the Registrant and Iowa State University Research Park Corporation</a>	S-1	12/21/2010	10.54
10.11		<a href="#">Iowa Values Fund Agreement dated March 18, 2005 by and between the Registrant and Iowa Department of Economic Development</a>	S-1	12/21/2010	10.56
10.12		<a href="#">Master Contract dated December 29, 2005 by and between the Registrant and Iowa Department of Economic Development</a>	S-1	12/21/2010	10.58
10.13		<a href="#">Contract Amendment dated April 21, 2009 between the Registrant and Iowa Department of Economic Development</a>	S-1	12/21/2010	10.59
10.14		<a href="#">Contract Amendment dated August 19, 2010 between the Registrant and Iowa Department of Economic Development</a>	S-1	12/21/2010	10.57
10.15		<a href="#">Contract Amendment dated August 19, 2010 between the Registrant and Iowa Department of Economic Development</a>	S-1	12/21/2010	10.6
10.16		<a href="#">Contract Amendment effective February 17, 2011 between the Registrant and Iowa Department of Economic Development</a>	S-1/A	9/14/2011	10.77
10.17		<a href="#">Contract Amendment effective February 17, 2011 between the Registrant and Iowa Department of Economic Development</a>	S-1/A	9/14/2011	10.78
10.18		<a href="#">NewLink Genetics Corporation 401(k) Prototype Plan and Trust, effective as of January 1, 2005</a>	8-K	3/12/2012	10.2
10.19		<a href="#">NewLink Genetics Corporation 401(k) Adoption Agreement, effective as of January 1, 2005</a>	8-K	3/12/2012	10.3
10.20		<a href="#">Material Modification to the NewLink Genetics Corporation 401(k) Adoption Agreement, effective as of January 1, 2011</a>	8-K	3/12/2012	10.4
10.21		<a href="#">Settlement Agreement with the Iowa Economic Development Authority, effective as of March 26, 2012</a>	8-K	3/28/2012	10.1
10.22		<a href="#">Memorandum of Agreement dated April 15, 2013 by and between the Registrant and Iowa State University Research Park Corporation</a>	10-Q	5/8/2013	10.1

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10.23	<a href="#">Memorandum of Agreement; Addendum to the Lease Between ISU Research Park Corporation and the Registrant dated March 1, 2010</a>	10-Q	8/8/2013	10.2	
10.24	<a href="#">License Agreement Amendment, by and between NewLink Genetics Corporation and Georgia Health Sciences University Research Institute, dated as of July 13, 2013</a>	10-Q	11/12/2013	10.2	
10.25	* <a href="#">License and Collaboration Agreement dated November 21, 2014 by and among the Company, BioProtection Systems Corporation and Merck Sharp &amp; Dohme Corp.</a>				X
10.25.1	* <a href="#">Amendment to License and Collaboration Agreement dated December 5, 2017 by and among the Company, BioProtection Systems Corporation and Merck Sharp &amp; Dohme Corp.</a>	10-K	3/5/2018	10.48.1	
10.25.2	* <a href="#">Amendment to License and Collaboration Agreement by and between Merck Sharp &amp; Dohme Corp., dated May 10, 2018</a>	10-Q	8/6/2018	10.1	
10.25.3	* <a href="#">Amendment No. 3 to License and Collaboration Agreement by and between the Registrant and Merck Sharp &amp; Dohme Corp., Dated October 9, 2018</a>	10-Q	11/2/2018	10.1	
10.25.4	* <a href="#">Amendment to License and Collaboration Agreement dated January 14, 2019 by and among the Company, BioProtection Systems Corporation and Merck Sharp &amp; Dohme Corp.</a>	10-K	3/5/2019	10.25.4	
10.26	<a href="#">Memorandum of Agreement dated February 12, 2015; Addendum to the Lease Between ISU Research Park Corporation and NewLink Genetics Corporation dated March 1, 2010</a>	10-K	3/16/2015	10.108	
10.27	* <a href="#">Sixth Amendment, effective March 15, 2016, to the License Agreement between Augusta University Research, Inc., the Georgia Health Sciences University Research Institute, Inc., and Medical College of Georgia Institute and the Registrant, dated September 13, 2005.</a>	10-Q/A	11/3/2016	10.8	
10.28	* <a href="#">Research Services Agreement, dated March 18, 2016, between the Registrant and Augusta University Research Institute, Inc.</a>	10-Q/A	11/3/2016	10.1	
10.29	<a href="#">Controlled Equity Offering Sales Agreement, dated March 12, 2018, between the Registrant and Cantor Fitzgerald, Co.</a>	8-K	3/13/2018	10.1	
10.30	<a href="#">License Agreement, dated March 19, 2017 between BlueLink Pharmaceuticals, Inc. and Cerulean Pharma, Inc.</a>	8-K	3/20/2017	10.1	
10.31	† <a href="#">Employment Agreement, dated July 29, 2019, by and between the Registrant and Charles J. Link</a>	10-Q	11/6/2019	10.1	
10.32	† <a href="#">Transition Agreement, dated September 27, 2019, by and between the Registrant and Dr. Nicholas N. Vahanian</a>	8-K	9/30/2019	10.2	
10.33	† <a href="#">Employment Agreement, dated September 30, 2019, by and between the Registrant and Carl Langren</a>	8-K	9/30/2019	10.3	
10.34	<a href="#">Employment Agreement, dated September 30, 2019, by and between the Registrant and Eugene Kennedy</a>	8-K	9/30/2019	10.4	
10.35	† <a href="#">Employment Agreement, dated September 30, 2019, by and between the Registrant and Lori Lawley</a>	8-K	9/30/2019	10.6	
10.36	† <a href="#">Employment Agreement, dated September 30, 2019, by and between the Registrant and Brad Powers</a>	8-K	9/30/2019	10.5	
10.37	* <a href="#">Amended and Restated License Agreement by and between BioProtection Systems Corporation and Her Majesty the Queen in Right of Canada, as represented by the Minister of Health, acting through the Public Health Agency of Canada, dated December 5, 2017.</a>	10-K	3/5/2018	10.61	
10.37.4	<a href="#">Amendment to the Amended and Restated License Agreement by and between BioProtection Systems Corporation and Her Majesty the Queen in Right of Canada, as represented by the Minister of Health, acting through the Public Health Agency of Canada, dated December 27, 2018.</a>	10-K	3/5/2019	10.40.1	
21.1	Subsidiary Information				X
23.1	Consent of KPMG LLP, independent registered public accounting firm				X
24.1	Power of Attorney (included on signature page hereto)				X
31.1	Rule 13a-14(a)/15d-14(a) Certification				X
31.2	Rule 13a-14(a)/15d-14(a) Certification				X
32.1	# Section 1350 Certification				X
101.INS	XBRL Instance Document (filed electronically herewith)				X
101.SCH	XBRL Taxonomy Extension Schema Document (filed electronically herewith)				X

101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document (filed electronically herewith)	X
101.LAB	XBRL Taxonomy Extension Label Linkbase Document (filed electronically herewith)	X
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document (filed electronically herewith)	X
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document (filed electronically herewith)	X

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† Indicates management contract or compensatory plan.

\* Indicates confidential treatment has been requested with respect to specific portions of this exhibit. Omitted portions have been filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Exchange Act.

# The certifications attached as Exhibit 32.1 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 NewLink Genetics Corporation under the Securities Act or the Exchange Act, 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**

None.

**SIGNATURES**

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

**NEWLINK GENETICS CORPORATION**

By: /s/ Brad J. Powers  
Brad J. Powers  
General Counsel  
(Principal Executive Officer)  
Date: March 3, 2020

By: /s/ Carl W. Langren  
Carl W. Langren  
Chief Financial Officer and Secretary  
(Principal Financial Officer)  
Date: March 3, 2020

By: /s/ Lori D. Lawley  
Lori D. Lawley  
Senior Vice President Finance  
(Principal Accounting Officer)  
Date: March 3, 2020

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each individual whose signature appears below constitutes and appoints Brad J. Powers and Carl W. Langren, and each of them, as his true and lawful attorneys-in-fact and agents, with full power of substitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, full power and authority to do and perform each and every act and thing requisite and necessary to be done therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, and any of them or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this report has been signed by the following persons on behalf of the registrant and in the capacities indicated:

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Brad J. Powers</u> Brad J. Powers	General Counsel (Principal Executive Officer)	March 3, 2020
<u>/s/ Carl W. Langren</u> Carl W. Langren	Chief Financial Officer and Secretary (Principal Financial Officer)	March 3, 2020
<u>/s/ Lori D. Lawley</u> Lori D. Lawley	Vice President Finance (Principal Accounting Officer)	March 3, 2020
<u>/s/ Thomas A. Raffin</u> Thomas A. Raffin	Director	March 3, 2020
<u>/s/ Ernest J. Talarico, III</u> Ernest J. Talarico, III	Director	March 3, 2020
<u>/s/ Lota Zoth</u> Lota Zoth	Director	March 3, 2020
<u>/s/ Chad A. Johnson, JD</u> Chad A. Johnson, JD	Director	March 3, 2020
<u>/s/ Matthew L. Sherman, MD</u> Matthew L. Sherman, MD	Director	March 3, 2020

## Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors NewLink Genetics Corporation:

### *Opinion on the Consolidated Financial Statements*

We have audited the accompanying consolidated balance sheets of NewLink Genetics Corporation and subsidiaries (the Company) as of December 31, 2019 and 2018, the related consolidated statements of operations, equity, and cash flows for each of the years in the three 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 three year period ended December 31, 2019, in conformity with U.S. generally accepted accounting principles.

### *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 Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the 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

We have served as the Company's auditor since 2002.

Des Moines, Iowa  
March 3, 2020

**NewLink Genetics Corporation  
and Subsidiaries  
Consolidated Balance Sheets  
(In thousands, except share and per share data)**

	December 31, 2019	December 31, 2018
<b>Assets</b>		
<b>Current assets:</b>		
Cash and cash equivalents	\$ 90,549	\$ 120,738
Prepaid expenses and other current assets	3,046	5,536
Current income tax receivable	69	339
Other receivables	755	459
Total current assets	94,419	127,072
<b>Non-current assets:</b>		
Property and equipment, net	1,633	3,727
Right-of-use asset	735	—
Income tax receivable	—	140
Total non-current assets	2,368	3,867
Total assets	\$ 96,787	\$ 130,939
<b>Liabilities and Stockholders' Equity</b>		
<b>Current liabilities:</b>		
Accounts payable	\$ 475	\$ 555
Accrued expenses	10,198	8,139
Income tax payable	11	—
Current portion of deferred rent	—	92
Current portion of lease liability	1,100	—
Current portion of notes payable	43	61
Total current liabilities	11,827	8,847
<b>Long term liabilities:</b>		
Royalty obligation payable to Iowa Economic Development Authority	6,000	6,000
Notes payable	—	43
Lease liability	82	—
Deferred rent	—	906
Total long-term liabilities	6,082	6,949
Total liabilities	17,909	15,796
<b>Stockholders' Equity:</b>		
Blank check preferred stock, \$0.01 par value: Authorized shares — 5,000,000 at December 31, 2019 and 2018; issued and outstanding shares — 0 at December 31, 2019 and 2018	—	—
Common stock, \$0.01 par value: Authorized shares — 75,000,000 at December 31, 2019 and 2018; issued 37,440,094 and 37,343,547 at December 31, 2019 and 2018, respectively and outstanding 37,325,091 and 37,251,220 at December 31, 2019 and 2018, respectively	374	373
Additional paid-in capital	413,959	407,199
Treasury stock, at cost: 115,003 and 92,327 shares at December 31, 2019 and 2018	(1,454)	(1,417)
Accumulated deficit	(334,001)	(291,012)
Total stockholders' equity	78,878	115,143
Total liabilities and stockholders' equity	\$ 96,787	\$ 130,939

See accompanying notes to consolidated financial statements.

**NewLink Genetics Corporation  
and Subsidiaries  
Consolidated Statements of Operations  
(In thousands, except share and per share data)**

	Year Ended December 31,		
	2019	2018	2017
Grant revenue	\$ —	\$ 11,268	\$ 28,321
Licensing and collaboration revenue	936	1,206	390
Total operating revenues	936	12,474	28,711
Operating expenses:			
Research and development	22,205	45,694	69,866
General and administrative	23,865	29,218	31,726
Total operating expenses	46,070	74,912	101,592
Loss from operations	(45,134)	(62,438)	(72,881)
Other income and expense:			
Miscellaneous (expense) income	(19)	(102)	(126)
Interest income	2,226	2,029	616
Interest expense	(50)	(52)	(119)
Other income, net	2,157	1,875	371
Loss before taxes	(42,977)	(60,563)	(72,510)
Income tax (expense) benefit	(12)	6,968	559
Net loss	\$ (42,989)	\$ (53,595)	\$ (71,951)
Basic and diluted loss per share	\$ (1.15)	\$ (1.44)	\$ (2.30)
Basic and diluted average shares outstanding	37,294,505	37,191,262	31,304,309

See accompanying notes to consolidated financial statements.

**NewLink Genetics Corporation  
and Subsidiaries  
Consolidated Statements of Equity  
(In thousands, except share and per share data)**

	Common Stock				Accumulated Deficit	Total Stockholders' Equity
	Number of Common Shares Outstanding	Common Stock	Additional Paid-in Capital	Treasury Stock		
Balance at December 31, 2016	29,163,673	\$ 292	\$ 295,535	\$ (853)	\$ (165,508)	\$ 129,466
Share-based compensation	—	—	18,508	—	—	18,508
Exercise of stock options and vesting of restricted stock awards	212,961	2	960	—	—	962
Sales of shares under stock purchase plan	70,787	1	444	—	—	445
Issuance of common stock under the ATM Offering (net of offering costs of \$561 thousand)	1,940,656	19	19,314	—	—	19,333
Issuance of common stock under public offering (net of offering costs of \$3.7 million)	5,750,000	58	55,025	—	—	55,083
Repurchase of common stock	(28,521)	—	—	(289)	—	(289)
Net loss	—	—	—	—	(71,951)	(71,951)
Balance at December 31, 2017	37,109,556	\$ 372	\$ 389,786	\$ (1,142)	\$ (237,459)	\$ 151,557
Share-based compensation	—	—	17,120	—	—	17,120
Exercise of stock options and vesting of restricted stock awards	126,938	1	142	—	—	143
Sales of shares under stock purchase plan	48,487	—	151	—	—	151
Repurchase of common stock	(33,761)	—	—	(275)	—	(275)
Cumulative effect of accounting change	—	—	—	—	42	42
Net loss	—	—	—	—	(53,595)	(53,595)
Balance at December 31, 2018	37,251,220	\$ 373	\$ 407,199	\$ (1,417)	\$ (291,012)	\$ 115,143
Share-based compensation	—	—	6,722	—	—	6,722
Vesting of restricted stock awards	66,694	—	—	—	—	—
Sales of shares under stock purchase plan	29,853	—	38	—	—	38
Repurchase of common stock	(22,676)	1	—	(37)	—	(36)
Net loss	—	—	—	—	(42,989)	(42,989)
Balance at December 31, 2019	37,325,091	\$ 374	\$ 413,959	\$ (1,454)	\$ (334,001)	\$ 78,878

See accompanying notes to consolidated financial statements.

**NewLink Genetics Corporation  
and Subsidiaries  
Consolidated Statements of Cash Flows  
(In thousands)**

	<b>Year Ended December 31,</b>		
	<b>2019</b>	<b>2018</b>	<b>2017</b>
<b>Cash Flows From Operating Activities</b>			
Net loss	\$ (42,989)	\$ (53,595)	\$ (71,951)
<b>Adjustments to reconcile net loss to net cash used in operating activities:</b>			
Share-based compensation	6,722	17,120	18,508
Depreciation and amortization	1,645	1,145	1,407
Amortization of right-to-use asset and change in operating lease liability	(551)	—	—
Impairment of fixed assets	351	—	—
Loss on sale of fixed assets	20	102	126
Changes in operating assets and liabilities:			
Prepaid expenses and other current assets	2,491	226	(305)
Other receivables	(296)	10,223	14,350
Accounts payable and accrued expenses	1,979	(13,029)	(15,469)
Income taxes receivable, net	421	17	5,479
Unearned revenue	—	(56)	(335)
Deferred rent	—	(92)	(91)
Net cash used in operating activities	<u>(30,207)</u>	<u>(37,939)</u>	<u>(48,281)</u>
<b>Cash Flows From Investing Activities</b>			
Purchase of equipment	—	(7)	(43)
Proceeds on sale of equipment	77	124	254
Net cash provided by investing activities	<u>77</u>	<u>117</u>	<u>211</u>
<b>Cash Flows From Financing Activities</b>			
Issuance of common stock, net of offering costs	—	—	74,416
Issuance of common stock under share-based compensation plans	38	294	1,407
Repurchase of common stock	(36)	(275)	(289)
Principal payments on notes payable	(61)	(167)	(246)
Net cash (used in) provided by financing activities	<u>(59)</u>	<u>(148)</u>	<u>75,288</u>
Net (decrease) increase in cash and cash equivalents	<u>(30,189)</u>	<u>(37,970)</u>	<u>27,218</u>
Cash and cash equivalents at beginning of year	<u>120,738</u>	<u>158,708</u>	<u>131,490</u>
Cash and cash equivalents at end of year	<u>\$ 90,549</u>	<u>\$ 120,738</u>	<u>\$ 158,708</u>
<b>Supplemental disclosure of cash flows information:</b>			
Cash paid for interest	\$ 4	\$ 8	\$ 15
Cash paid for taxes	15	25	643
Proceeds from income tax refunds	425	7,057	6,651

See accompanying notes to consolidated financial statements.

**NewLink Genetics Corporation  
and Subsidiaries  
Notes to Consolidated Financial Statements**

**1. Description of Business Activities**

NewLink Genetics Corporation (NewLink) was incorporated as a Delaware corporation on June 4, 1999 and initiated operations in April of 2000.

NewLink and its subsidiaries (the Company) are devoting substantially all of their efforts toward research and development. The Company has incurred significant losses in all years since being incorporated, except for the year ended December 31, 2014, and has never generated revenue from commercial sales of its drugs.

The accompanying financial statements as of and for the year ended December 31, 2019 have been prepared assuming the Company will continue as a going concern. The Company raised net proceeds of \$37.6 million from its IPO, completed a follow-on offering of its common stock raising net proceeds of \$49.0 million, and raised an additional \$58.7 million in net proceeds from an at the market offering (ATM) prior to March 31, 2015.

During 2017, the Company sold 1,940,656 shares of its common stock under an ATM offering, with aggregate net proceeds of \$19.3 million after commissions of \$398,000 paid to Cantor Fitzgerald & Co. (Cantor) as the placement agent, and other costs of \$163,000. In October 2017, the Company sold 5,750,000 of its shares of common stock in a public offering for aggregate net proceeds of \$55.2 million after underwriters' discounts, commissions and other expenses of \$3.7 million.

The Company's cash and cash equivalents are expected to be adequate to satisfy the Company's liquidity requirements through 2021. If available liquidity becomes insufficient to meet the Company's operating obligations as they come due, the Company's plans include pursuing alternative funding arrangements and/or reducing expenditures as necessary to meet the Company's cash requirements. However, there is no assurance that, if required, the Company will be able to raise additional capital or reduce discretionary spending to provide the required liquidity. Failure by the Company to successfully execute its plans or otherwise address its liquidity needs may have a material adverse effect on its business and financial position, and may materially affect the Company's ability to continue as a going concern.

***Merger Agreement with Lumos***

On September 30, 2019, we entered into an Agreement and Plan of Merger and Reorganization (as amended, the Merger Agreement) with Cyclone Merger Sub, Inc., a wholly-owned subsidiary of NewLink (the Merger Sub) and Lumos Pharma, Inc., a privately-held Delaware corporation (Lumos), pursuant to which, among other things, subject to the satisfaction or waiver of the conditions set forth in the Merger Agreement, Merger Sub will merge with and into Lumos, with Lumos surviving as our wholly-owned subsidiary (the Merger). Following the Merger, we will change our name to "Lumos Pharma, Inc." and Lumos will change its name to a name mutually agreed upon by us and Lumos.

If our stockholders approve the Merger, at the effective time of the Merger (the Effective Time), each share of Lumos capital stock outstanding immediately prior to the Effective Time (excluding shares of Lumos capital stock held as treasury stock or held or owned by Lumos or Merger Sub prior to the Effective Time and shares held by Lumos stockholders who have exercised and perfected appraisal rights in accordance with Delaware law) shall be automatically converted solely into the right to receive a number of shares of our common stock equal to the amount determined pursuant to a charter amendment to Lumos' certificate of incorporation that will be filed prior to the Effective Time, at exchange ratios applicable to each type of Lumos capital stock. Pursuant to such conversion, immediately following the Merger, former Lumos stockholders will own approximately 50% of the aggregate number of shares of our common stock issued and outstanding following the consummation of the Merger (the Post-Closing Shares), and our stockholders as of immediately prior to the Merger will own approximately 50% of the aggregate number of Post-Closing Shares. Outstanding options to purchase Lumos common stock will be assumed by us and converted into options to purchase a number of shares of our common stock at the exchange ratio applicable to exchanging shares of Lumos common stock for our common stock.

The Merger Agreement includes customary representations, warranties and covenants made by the Company and Lumos, including covenants relating to the Company's and Lumos' conduct of their respective businesses between the date of signing the Merger Agreement and the closing of the Merger. Consummation of the Merger is subject to certain closing conditions, including, among other things, approval by the stockholders of the Company and Lumos. Lumos stockholders approved the Merger in September 2019. The Merger Agreement contains certain termination rights for both NewLink and Lumos, and further provides that, upon termination of the Merger Agreement under specified circumstances, NewLink or Lumos, as applicable, may be required to pay the other party a termination fee of \$2.0 million.

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The Merger Agreement contemplates that we will also seek approval from our stockholders to effect a reverse stock split with the split ratio to be mutually agreed to by the Company and Lumos immediately prior to the Effective Time.

**2. Significant Accounting Policies**

***Use of Estimates***

The preparation of consolidated financial statements in conformity with U.S. generally accepted accounting principles (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 consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

***Principles of Consolidation***

The consolidated financial statements include the financial statements of NewLink and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

***Cash and Cash Equivalents***

For the purposes of the consolidated statements of cash flows, the Company considers all highly liquid debt instruments with an original maturity of three months or less to be cash equivalents. Cash and cash equivalents of \$90.5 million and \$120.7 million at December 31, 2019 and 2018, respectively, consist of checking and money market accounts.

***Property and Equipment***

Leasehold improvements and equipment are capitalized as the Company believes they have alternative future uses and are stated at cost. Equipment under capital leases is stated at the present value of future minimum lease payments. Depreciation on all leasehold improvements and equipment is calculated on the straight-line method over the shorter of the lease term or estimated useful life of the asset. Computer equipment has useful lives of three to five years, lab equipment has a useful life of five years and contract manufacturing organization equipment has a useful life of five years.

Long-lived assets are reviewed for impairment whenever changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset group to future net undiscounted cash flows expected to be generated by the asset group, primarily relating to proceeds for selling the assets. If such assets are considered to be impaired, the impairment to be recognized is measured at the amount by which the carrying amount of the assets exceeds the fair value of the assets. Assets to be disposed of are reported at the lower of the carrying amount or fair value less costs to sell.

***Recently Adopted Accounting Pronouncements***

In February 2016, the FASB issued ASU No. 2016-02 (Topic 842), Leases, to improve financial reporting for leasing transactions. The Company adopted the standard on January 1, 2019 using the modified retrospective method, as required, applying the new standard to all leases existing as of the date of initial application. The Company has elected that the date of the initial application, January 1, 2019, will be the effective date. Consequently, financial information is not updated and the disclosures required under the new standard are not provided for dates and periods before January 1, 2019. The Company elected the "package of practical expedients", which permits the Company not to reassess under the new standard its prior conclusions about lease identification, lease classification and initial direct costs. The Company did not elect to apply the use-of-hindsight or the practical expedient pertaining to land easements; as the latter is not applicable to the Company.

Upon adoption of the standard, the Company recorded a lease liability of \$8.5 million and a right-of-use asset of \$7.5 million associated with these leases. Included in the right-of-use asset are lease incentives that were previously recorded as deferred rent liability of \$1.0 million as of December 31, 2018 on the consolidated balance sheet. There was no material impact to the consolidated statement of operations. Refer to Note 3 within for additional discussion around the lease liability and right-of-use asset as of December 31, 2019.

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**Revenue Recognition**

Revenues are recognized under Topic 606 in 2019 and 2018 when control of the promised goods or services is transferred to the Company's customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those goods or services. Through 2018, the Company received payments from government entities under its grants and contracts with the Department of Defense and the United States Department of Health and Human Services (HHS). These agreements provided the Company cost reimbursement plus a percentage for certain types of expenditures in return for research and development activities over a contractually defined period. Grant revenues were recognized over time and measured using the input method. The Company used labor costs and subcontractor fees as inputs to measure progress towards satisfying its performance obligations under these agreements. This was the most faithful depiction of the transfer of goods and services to the government entities due to the government entities' control over the research and development activities. Under this method, the Company recognized revenue generally in the period during which the related costs are incurred, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those goods or services.

The grants and contracts with the government entities were fully transferred to Merck as of June 2018. Accordingly, during the twelve months ended December 31, 2019, the Company recognized no grant revenues.

**Expenses Accrued Under Contractual Arrangements with Third Parties; Accrued Clinical Expenses**

The Company estimates its accrued expenses through a process of reviewing open contracts and purchase orders, communicating with personnel to identify services that have been performed and estimating the level of service performed and the associated cost incurred for the service that may not be invoiced from the provider. The estimates of accrued expenses as of each balance sheet date are based on facts and circumstances known at that time. Such estimates are periodically confirmed with the service providers to verify accuracy.

The Company bases its expenses related to clinical trials on estimates of the services received and efforts expended pursuant to contracts with multiple research institutions and contract research organizations that conduct and manage clinical trials on behalf of the Company. Invoicing from third-party contractors for services performed can lag several months. The Company accrues the costs of services rendered in connection with third-party contractor activities based on its estimate of management fees, site management and monitoring costs and data management costs as contracted. Differences between actual clinical trial costs and estimated clinical trial costs are adjusted for in the period in which they become known through operations.

**Research and Development**

Research and development costs are expensed as incurred. Research and development expenses consist primarily of employee-related expenses, which include salaries, bonuses, benefits and share-based compensation; manufacturing-related costs; clinical trial expenses which include expenses incurred under agreements with contract research organizations, investigative sites and consultants that conduct our clinical trials; facilities, depreciation of fixed assets and other allocated expenses, which include direct and allocated expenses for rent and maintenance of research facilities and equipment; license fees for and milestone payments related to in-licensed products and technology; and costs associated with non-clinical activities and regulatory approvals.

**Patents**

The Company generally applies for patent protection on processes and products. Patent application costs are expensed as incurred as a component of general and administrative expense, as recoverability of such expenditures is uncertain.

**Income Taxes**

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in operating results in the period that includes the enactment date. Management assesses the realizability of deferred tax assets and records a valuation allowance if it is more likely than not that all or a portion of the deferred tax assets will not be realized.

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The Company accounts for the effect of any uncertain tax positions based on a more likely than not threshold to the recognition of the tax positions being sustained based on the technical merits of the position under scrutiny by the applicable taxing authority. If a tax position or positions are deemed to result in uncertainties of those positions, the unrecognized tax position is estimated based on a cumulative probability assessment that aggregates the estimated tax liability for all uncertain tax positions. Interest and penalties assessed, if any, are recorded in its consolidated statement of operations in interest expense and other expenses. As of December 31, 2019 and 2018, the Company had a recognized uncertain tax position of \$653,000.

#### ***Share-Based Compensation***

The Company is required to estimate the grant-date fair value of share-based payment transactions with employees which include stock options, restricted stock units (RSUs) and performance shares (PSUs) and recognizes the compensation cost over the requisite service period based on the estimated fair values as well as expected forfeiture rates. The Company estimates the fair value of each award granted using the Black-Scholes option pricing model. The Black-Scholes model requires the input of assumptions, including the expected stock price volatility, the calculation of expected term and the fair value of the underlying common stock on the date of grant, among other inputs. The Company calculates the fair value of the award on the grant date, which is the date the award is authorized by the Board of Directors or Chief Executive Officer and the employee has an understanding of the terms of the award.

Generally, the Company has issued employee awards that vest either monthly or 25% vest on the first anniversary date of issuance with the remaining options vesting ratably over the next 36 months. Under the Option Exchange program discussed further in Note 8, the new awards granted will vest in equal annual amounts over either two or three years, depending on whether the tendered eligible option was vested as of the exchange date. The Company records compensation cost on a straight-line basis over the vesting period. The fair value of RSUs that are subject to cliff vesting are recognized as compensation expense over the requisite service period using the straight line attribution method, and the fair value of RSUs that are subject to graded vesting are recognized as compensation expense over the requisite service period using the accelerated attribution method. The fair value of PSUs are recognized as compensation expense beginning at the time in which the performance conditions are deemed probable of achievement, over the remaining requisite service period.

The Company has issued awards to nonemployee consultants and advisers. All grants to nonemployees are valued using the same fair value method that we use for grants to employees. The compensation cost on these awards is measured each period until vesting and is recognized through the earlier of the vesting of the award or completion of services by the nonemployee.

Following is a description of the inputs for the Black-Scholes model:

#### ***Exercise Price***

The Company uses the quoted market price as listed on the public exchange on the date of grant. If Incentive Stock Options are granted to a 10% stockholder in the Company, the exercise price shall not be less than 110% of the common stock's fair market value on the date of grant.

#### ***Expected Term (in Years)***

The expected term of a stock option is the period of time for which the option is expected to be outstanding. The Company uses historical exercise and option expiration data to estimate the expected term for the Black-Scholes grant-date valuation.

#### ***Risk-Free Interest Rate***

The Company uses the average yield on current U.S. Treasury instruments with terms that approximate the expected term of the stock options being valued.

#### ***Expected Dividend Yield***

The expected dividend yield for all of the Company's stock option grants is 0%, as the Company has not declared a cash dividend since inception and has no plans to declare a dividend.

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*Expected Volatility*

The Company uses its historical stock price volatility. The volatility is calculated over a period of time commensurate with the expected term for the options granted.

*Forfeitures*

The share-based compensation expense has been reduced for estimated forfeitures. The estimated forfeiture rate is based on historical experience of the Company's option plan, which the Company expects to continue at the current level, and any adjustments in the forfeiture rate in the future will result in a cumulative adjustment in the period that this estimate is changed. Ultimately, the total compensation expense recognized for any given stock-based award over its vesting period will only be for those shares that actually vest.

***Segments***

The Company operates in one segment. The Company conducts its operations from its main offices in Ames, Iowa. The Company conducts preclinical and clinical research in the biopharmaceutical industry. The chief operating decision maker uses cash flow as the primary measure to manage the business and management does not segment its business for internal reporting or decision-making.

***Financial Instruments and Concentrations of Credit Risk***

The fair values of cash and cash equivalents, receivables and accounts payable, which are recorded at cost, approximate fair value based on the short-term nature of these financial instruments. The fair value of notes payable approximates book value. The Company is unable to estimate the fair value of the royalty obligation based on future product sales as the timing of payments, if any, is uncertain.

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash and cash equivalents. Cash and cash equivalents are held by financial institutions and are federally insured up to certain limits. At times, the Company's cash and cash equivalents balance exceeds the federally insured limits. To limit the credit risk, the Company invests its excess cash primarily in high quality securities such as money market funds. The money market funds are valued based on observable Level 1 inputs.

***Earnings per share (EPS)***

The Company computes basic EPS attributable to the Company's common stockholders by dividing net income (loss) attributable to the Company by our weighted-average common shares outstanding during the period. Diluted EPS reflects the potential dilution beyond shares for basic EPS that could occur if securities or other contracts to issue common stock were exercised, converted into common stock, or resulted in the issuance of common stock that would have shared in our earnings. The Company computes basic and diluted EPS using net income (loss) attributable to the Company's common stockholders, and its actual weighted-average shares.

**3. Leases**

The Company has certain facility leases with non-cancellable terms ranging between one and three years, with certain renewal options.

The Company records lease liabilities based on the present value of lease payments over the lease term using an incremental borrowing rate to discount its lease liabilities, as the rate implicit in the lease is typically not readily determinable. The right-of-use asset is recognized on a straight-line basis over the remaining lease term. To compute the present value of the lease liability, the Company used a weighted-average discount rate of 5%. Certain lease agreements include renewal options that are under the Company's control. Prior to September 30, 2019, the Company had included the optional renewal periods in the lease term as the Company believed it to be reasonably certain that it would exercise the renewal option. At September 30, 2019, as part of the Company's restructuring, as discussed further in Note 13, the Company concluded it would not be seeking renewal of the leased facilities in Ames, Iowa and upon termination of the lease agreements, it would identify a new space for the Company. As a result of this decision, the Company remeasured the right-of-use assets and lease liabilities using the shorter term. The weighted-average remaining lease term as of December 31, 2019 is 1.2 years.

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The Company does not separate lease components from non-lease components. Variable lease payments include payments to lessors for taxes, maintenance, insurance and other operating costs as well as payments that are adjusted based on an index or rate. The Company's lease agreements do not contain any residual value guarantees or restrictive covenants.

Future minimum lease payments under the non-cancellable operating leases (with initial or remaining lease terms in excess of one year) as of December 31, 2019 are as follows (in thousands), excluding option renewals:

<b>For the Year Ended December 31:</b>	
2020	\$ 599
2021	133
Thereafter	—
Total future minimum lease payments	732
Less: Imputed interest	(25)
Unamortized lease incentive	475
<b>Total</b>	<b>\$ 1,182</b>

The following table summarizes the aggregate undiscounted non-cancelable future minimum lease payments for operating leases under the prior lease standard as of December 31, 2018 (in thousands), including option renewals:

<b>For the Year Ended December 31:</b>	
2019	\$ 1,105
2020	1,004
2021	923
2022	906
2023	909
Thereafter	6,570
<b>Total</b>	<b>\$ 11,417</b>

Operating lease expense during the years ended December 31, 2019, 2018 and 2017, was \$575,000, \$1.1 million, and \$1.2 million, respectively, including those with terms less than one year, and has been included in both research and development and general and administration in the consolidated statements of operations. In 2019, cash paid for operating leases was \$1.1 million and is included within the Statement of Cash Flows within the line Amortization of right-to-use asset and change in operating lease liability.

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**4. Leasehold Improvements and Equipment**

Leasehold improvements and equipment at December 31, 2019 and 2018 consisted of the following:

	Year Ended December 31,	
	2019	2018
Leasehold improvements	\$ 5,217	\$ 5,300
Computer and office equipment	1,846	1,984
Lab and leased equipment	2,330	3,398
Contract manufacturing organization equipment	30	30
Total leasehold improvements and equipment	9,423	10,712
Less accumulated depreciation and amortization	(7,790)	(6,985)
Total leasehold improvements and equipment, net	\$ 1,633	\$ 3,727

**5. Long-Term Debt and Conversion to Royalty Obligation**

*March 2005 Iowa Department of Economic Development Loan*

In March 2005, the Company entered into a \$6.0 million forgivable loan agreement with the Iowa Department of Economic Development (the IDED). Under the agreement, in the absence of default, there were no principal or interest payments due until the completion date for the project. The balance outstanding under the loan agreement was \$6.0 million as of December 31, 2011. This loan was converted into a royalty obligation under the terms of a settlement agreement entered into on March 26, 2012 (the IEDA Agreement), with the Iowa Economic Development Authority (the IEDA), as successor in interest to the IDED.

*March 2012 IEDA Royalty Obligation*

Under the terms of the IEDA Agreement the Company agreed to pay a 0.5% royalty on future product sales up to a cap of \$6.8 million in exchange for IDED's release of the Company's job creation and project expenditure obligations and their release of the security interest in substantially all of the Company's assets. As no payments are expected in the next 12 months, the entire accrued royalty obligation of \$6.0 million is considered long-term as of December 31, 2019.

*2009 and 2012 Iowa State University Research Park Notes*

In 2009, the Company executed a promissory note in favor of Iowa State University Research Park (ISURP) in an original principal amount of \$800,000, which was due in monthly installments through March, 2018. The note represented amounts owed by the Company to ISURP for certain improvements that were made to facilities the Company leases from ISURP. The final payment was made in 2018.

In 2012, the Company executed a promissory note in favor of ISURP in an original principal amount of \$456,000, which is due in monthly installments through September 2020. The note represents amounts owed by the Company to ISURP for certain additional improvements that were made to facilities the Company leases from ISURP. The principal and interest owed under the note is amortized over an eight-year period. Interest is payable monthly under this promissory note, initially at a rate of 3.0% per annum and increasing to 5.0% per annum after five years from the date the improvements were completed. ISURP may accelerate all amounts owed under the note upon an event of default, including the Company's uncured material breach of the terms of the note or the lease or upon early termination of the lease. In the event of a default under the note, amounts owed under the note will bear interest at 8.0% per annum. The balance outstanding under the 2012 note was \$43,000 and \$104,000 at December 31, 2019 and December 31, 2018, respectively.

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## **6. License and Research Collaboration Agreements**

### ***Genentech, a Member of the Roche Group***

In October 2014, the Company entered into a worldwide exclusive collaboration and license agreements with Genentech for the development and commercialization of NLG919, one of NewLink's clinical stage IDO pathway inhibitors and for a research collaboration for the discovery of next generation IDO/TDO compounds to be developed and commercialized under this agreement. Under the terms of the agreement, the Company received a nonrefundable upfront cash payment of \$150.0 million from Genentech in 2014. On June 6, 2017, we received a formal notice of Genentech's intent to terminate the Genentech Agreement with respect to NLG919. As part of the partial termination, worldwide rights to NLG919 reverted to us, and Genentech granted to us an exclusive, royalty-bearing license under certain Genentech intellectual property to develop and commercialize NLG919. If NLG919 is commercialized, we will be obligated to pay to Genentech royalties as a low single-digit percentage of net sales of NLG919. The Genentech Agreement terminated in its entirety on November 6, 2018.

### ***Merck Sharpe & Dohme Corp.***

In November 2014, the Company entered into a licensing and collaboration agreement with Merck to develop, manufacture and commercialize rVSVΔG-ZEBOV GP, an Ebola vaccine the Company licensed from the Public Health Agency of Canada (PHAC). Under the terms of the agreement, the Company granted Merck an exclusive, royalty-bearing license to the rVSVΔG-ZEBOV GP and related technology. NewLink received a \$30.0 million non-refundable, upfront payment in December 2014, and was also eligible for a one-time \$20.0 million non-refundable milestone payment upon the initiation of the pivotal clinical trial using the current rVSVΔG-ZEBOV GP vaccine product as one arm of the trial. In February 2015, this milestone was achieved and the Company received the milestone payment.

The Merck Agreement was amended on December 5, 2017 in connection with our entry into an amended and restated PHAC license on December 5, 2017. The amended Merck Agreement absolves our subsidiary, BioProtection Systems Corporation (BPS), from any future obligation to negotiate or amend the terms of the PHAC license, converts the scope of Merck's sublicense under PHAC's intellectual property rights to be non-exclusive in the Ebola Sudan field of use, and requires Merck to reimburse us in certain circumstances where we may be obligated to pay royalties to PHAC as a result of Merck's product sales but Merck would not otherwise be obligated to pay a royalty to us. On April 26, 2018, the Company entered into an agreement with Merck, the U.S. BioMedical Advanced Research and Development Authority (BARDA), and the Defense Threat Reduction Agency (DTRA) to transfer the government grants from BARDA and DTRA to Merck. The transfer was completed in June 2018 and Merck has replaced the Company as the prime contractor on all such grants.

On December 20, 2019, Merck announced that the FDA approved its application for ERVEBO® (Ebola Zaire Vaccine, Live) for the prevention of disease caused by Zaire Ebola virus in individuals 18 years of age and older. On January 3, 2020, Merck notified the Company that they had been issued a priority review voucher (PRV). Under the terms of the Merck Agreement, on February 4, 2020, Merck assigned all of its rights and interests in connection with the PRV to the Company. The Company is entitled to 60% of the value of the PRV obtained through sale, transfer or other disposition of the PRV. We also have the potential to earn royalties on sales of the vaccine in certain countries, if the vaccine is successfully commercialized by Merck. However, we believe that the market for the vaccine will be limited primarily to areas in the developing world that are excluded from royalty payment or where the vaccine is donated or sold at low or no margin and therefore we do not expect to receive material royalty payments from Merck in the foreseeable future.

For the years ended December 31, 2019 and 2018, the Company recognized revenue under the amended Merck Agreement of \$636,000 and \$1.2 million, respectively, for work the Company performed as a subcontractor of Merck under the government contracts that were transferred to Merck in June 2018.

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## 7. Stockholders' Equity

### *Common Stock*

The holders of common stock are entitled to one vote per share on all matters to be voted upon by the Company stockholders. Subject to preferences applicable to outstanding preferred stock, the holders of common stock are entitled to receive ratably such dividends, if any, as may be declared from time to time by the Company's Board of Directors.

In the event of liquidation, dissolution, or winding up of the Company, the holders of common stock are entitled to share ratably in all assets remaining after payment of liabilities subject to prior distribution rights of the preferred stock.

### *Preferred Stock*

As of December 31, 2019 and 2018, the Company had no outstanding preferred stock. The Company's Board of Directors has the authority to issue up to 5,000,000 shares of preferred stock in one or more series and to fix the voting power and such designations, preferences, and rights of such series, subject to approval of outstanding preferred series stockholders.

## 8. Common Stock Equity Incentive Plans

In April 2000, the stockholders approved NewLink's 2000 Equity Incentive Plan, as amended (the 2000 Plan) and in July 2009, the stockholders approved NewLink's 2009 Equity Incentive Plan, as amended (the 2009 Plan). Following the approval of the 2009 Plan, all options outstanding under the 2000 Plan were effectively included under the 2009 Plan. Under the provisions of the 2009 Plan, NewLink may grant the following types of common stock awards:

- Incentive Stock Options
- Nonstatutory Stock Options
- Restricted Stock Awards
- Stock Appreciation Rights

Awards under the 2009 Plan, as amended, may be made to officers, employees, members of the NewLink Board of Directors, advisors, and consultants to NewLink. As of December 31, 2019 there were 12,400,653 shares of common stock authorized for the 2009 Plan and 7,506,956 shares remained available for issuance. As of December 31, 2018 there were 11,722,602 shares of common stock authorized for issuance pursuant to the 2009 Plan and 1,879,686 shares remained available for issuance.

The following table summarizes the authorized increases of common stock under the 2009 Plan:

<u>Date Authorized</u>	<u>Authorized Shares Added</u>
May 15, 2010	1,238,095
January 7, 2011	714,286
January 1, 2013	838,375
January 1, 2014	1,066,340
January 1, 2015	1,119,255
January 1, 2016	1,152,565
January 1, 2017	1,166,546
January 1, 2018	1,484,382
January 1, 2019	1,490,048

Subsequent to year end, on January 1, 2020, an additional 1,119,752 shares of common stock were added to the shares reserved for future issuance under the 2009 plan. The increases in the authorized shares of common stock under the 2009 Plan in 2010 and 2011 were approved by the Company's stockholders. The increases in the authorized shares of common stock under the 2009 Plan in 2012 through 2018 were made pursuant to an "evergreen provision," in accordance with which, on January 1 of each year, from 2012 to (and including) 2019, a number of shares of common stock in an amount equal to 4% of

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the total number of shares of common stock outstanding on December 31 of the preceding calendar year, or such lesser amount of shares (or no shares) approved by the Company's Board of Directors, was added or will be added to the shares reserved under the 2009 Plan.

On May 9, 2019, the Company's stockholders approved an amendment to the 2009 Plan which, among other modifications, included decreasing the automatic annual "evergreen provision" from 4% to 3%, in accordance with which, on January 1 of each year, from 2020 to (and including) 2029, a number of shares of common stock in an amount equal to 3% of the total number of shares of common stock outstanding on December 31 of the preceding calendar year, or such lesser amount of shares (or no shares) approved by the Company's Board of Directors, was added or will be added to the shares reserved under the 2009 Plan.

Under the terms of the Company's 2010 Non-Employee Directors' Stock Option Plan, as amended (the Directors' Plan), which became effective on November 10, 2011, 238,095 shares of common stock were reserved for future issuance. On May 9, 2013, an additional 161,905 shares of common stock were added to the reserve. As of December 31, 2019, 268,902 shares are available for issuance under the Directors' Plan.

Under the terms of the Company's 2010 Employee Stock Purchase Plan, as amended (the 2010 Purchase Plan), which became effective on November 10, 2011, 214,285 shares of common stock were reserved for future issuance. On May 9, 2013, an additional 185,715 shares of common stock were added to the reserve. As of December 31, 2019, 23,656 shares remained available for issuance under the plan. During the years ended December 31, 2019 and 2018, 29,853 and 48,487 shares of common stock, respectively, were purchased under the terms of the 2010 Purchase Plan.

### **Option Exchange Program**

On June 20, 2019, the Company commenced an option exchange program (Option Exchange) for its officers and employees to exchange eligible stock options to purchase up to an aggregate of 5,849,059 shares of the Company's common stock that had been granted to eligible holders, for a lesser number of new stock options with a lower exercise price. Stock options granted prior to December 31, 2018 with an exercise price equal to or greater than \$2.97 and held by eligible holders in continuous service through the termination of the Option Exchange were eligible for exchange in the Option Exchange.

The eligible shares were exercisable for a reduced number of shares based on the following exchange ratios:

Exercise Price Range per Share	Number of Outstanding Eligible Options	Exchange Ratio (Surrendered Stock Options to New Stock Options)
\$2.97-\$10.99	2,725,812	2 to 1
\$11.00-\$24.99	720,373	3 to 1
\$25.00-And Up	468,671	4 to 1

Upon the expiration of the Option Exchange on July 31, 2019, 45 eligible employees and 5 eligible directors had tendered an aggregate of 3,914,856 options, representing 67% of the total eligible options, for 1,720,341 new options to purchase shares of common stock (New Awards). Each New Award was granted on July 31, 2019, pursuant to the Company's 2009 Plan, with an exercise price per share of \$1.77 per share, the closing price on the grant date of the New Awards. Each New Award has a maximum term of seven years. The New Awards will vest in equal annual amounts over either two or three years, depending on whether the tendered eligible option was vested as of the exchange date.

As a result of this transaction the Company will recognize additional stock-based compensation expense of \$1.0 million over the vesting schedule of the New Awards.

### **Share-based Compensation**

Share-based employee compensation expense for the years ended December 31, 2019, 2018 and 2017, was \$6.7 million, \$17.1 million, and \$18.5 million, respectively, and is allocated between research and development and general and administrative expenses within the consolidated statements of operations. As of December 31, 2019, the total compensation cost related to unvested option awards not yet recognized was \$2.5 million and the weighted average period over which it is

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expected to be recognized was 2.7 years. The Company recognized no income tax benefit in the consolidated statements of operations for stock-based compensation arrangements for the years ended December 31, 2019, 2018 and 2017, respectively.

**Stock Options and Performance Options**

The Company's Board of Directors determines the vesting period for each stock option award. Generally, stock options awarded to date under the 2009 Plan vest monthly or vest 25% on the first anniversary date of issuance with the remaining options vesting ratably over the next 36 months, except as noted above for the New Awards granted under the Option Exchange. The stock options may include provisions for early exercise of options. If any shares acquired are unvested, they are subject to repurchase at the Company's discretion until they become vested.

The following table summarizes the stock option activity, including options with market and performance conditions and options granted and forfeited in conjunction with the option exchange program, for the year ended December 31, 2019:

	Number of options	Weighted average exercise price	Weighted average remaining contractual term (years)
Outstanding at beginning of period	7,978,030	\$ 11.86	
Options granted	3,753,274	1.77	
Options exercised	—	—	
Options forfeited	(5,355,229)	10.24	
Options expired	(2,866,016)	10.02	
Outstanding at end of period	3,510,059	5.04	4.1
Options exercisable at end of period	2,085,594	\$ 7.23	1.5

Based on the December 31, 2019 price of \$2.53 per share, the intrinsic value of stock options outstanding at December 31, 2019, was \$2.0 million, all of which related to stock options that were vested at that date.

The following table summarizes options that were granted during the years ended December 31, 2019, 2018 and 2017, and the range of assumptions used to estimate the fair value of those stock options using a Black-Scholes valuation model:

	Years Ended December 31,		
	2019	2018	2017
Number of options granted	3,753,274	1,657,523	1,526,787
Risk-free interest rate	1.77%-2.67%	2.61%-3.02%	1.91%-2.22%
Expected dividend yield	—	—	—
Expected volatility	77.0%-86.3%	76.2%-79.3%	68.9%-76.9%
Expected term (in years)	4.0-7.7	4.0-7.9	1.2-7.8
Weighted average grant-date fair value per share	\$1.89	\$4.84	\$7.72

The following table summarizes the intrinsic value of options exercised and the fair value of awards vested during the years ended December 31, 2019, 2018 and 2017:

	Years Ended December 31,		
	2019	2018	2017
Intrinsic value of options exercised	\$0	\$.1 million	\$1.0 million
Fair value of awards vested	\$3.5 million	\$13.0 million	\$15.0 million

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**Restricted Stock**

Restricted stock is common stock that is subject to restrictions, including risks of forfeiture, determined by the plan committee of the Board of Directors in its sole discretion, for so long as such common stock remains subject to any such restrictions. A holder of restricted stock has all rights of a stockholder with respect to such stock, including the right to vote and to receive dividends thereon, except as otherwise provided in the award agreement relating to such award. Restricted stock awards are equity classified within the consolidated balance sheets. The fair value of each restricted stock grant is estimated on the date of grant using the closing price of the Company's Common Stock on The Nasdaq Global Market on the date of grant.

During the year ended December 31, 2019 and 2018, there were no shares of restricted stock granted. Compensation expense is determined for the issuance of restricted stock by amortizing using either a straight-line basis or the accelerated attribution method over the requisite service period, or the vesting period, the aggregate fair value of the restricted stock awarded based on the closing price of the Company's common stock on the date of grant.

A summary of the Company's unvested restricted stock at December 31, 2019 and changes during the year ended December 31, 2019 is as follows:

	Restricted Stock	Weighted Average Grant Date Fair Value
Unvested at beginning of period	68,585	\$ 37.75
Granted	—	—
Vested	(66,694)	37.84
Forfeited/cancelled	—	—
Unvested at end of period	<u>1,891</u>	<u>\$ 34.73</u>

As of December 31, 2019, the total remaining unrecognized compensation cost related to issuances of restricted stock was approximately \$26,000 and is expected to be recognized in 2020. The fair value of restricted stock awards vested during the year ended December 31, 2019 was \$107,506.

The Company does not have a formal policy regarding the source of shares issued upon exercise of stock options or issuance of restricted stock. The Company expects shares issued to be issued from treasury shares or new shares.

**9. Income Taxes****U.S. Tax Reform**

On December 22, 2017, the U.S. government enacted comprehensive tax legislation commonly referred to as the Tax Cuts and Jobs Act (the Tax Act). The Tax Act makes broad and complex changes to the U.S. tax code that affect fiscal 2017 and 2018. The Tax Act also makes a number of changes to U.S. federal income tax laws that affect 2018 and later years, including, but not limited to, a reduction of the U.S. federal corporate income tax rate from 35% to 21%, the repeal of the corporate alternative minimum tax (AMT), the limitation on net operating loss deductions to 80 percent of taxable income for losses beginning after December 31, 2017 and the repeal of the then current two-year carryback provision for net operating losses arising after 2017.

In connection with its analysis of the impact of the Tax Act, the Company recorded a net tax benefit of \$140,000 in 2018 which is for the release of the valuation allowance that had previously been recorded to offset the AMT deferred income tax benefit of which \$69,000 remains classified as an income tax receivable as of December 31, 2019. The Tax Act provides that AMT credit carryovers are partially refundable beginning in 2018 as an offset to a tax liability. The Company expects the amount to be fully refunded by 2021. The Tax Act had no other material impacts to the consolidated financial statements upon enactment.

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Income tax (expense) benefit consists of (in thousands):

	Current	Deferred	Total
<b>Year Ended December 31, 2019:</b>			
U.S. federal	\$ —	\$ —	\$ —
State and local	(12)	—	(12)
	<u>\$ (12)</u>	<u>\$ —</u>	<u>\$ (12)</u>
<b>Year Ended December 31, 2018:</b>			
U.S. federal	\$ —	\$ —	\$ —
State and local	6,968	—	6,968
	<u>\$ 6,968</u>	<u>\$ —</u>	<u>\$ 6,968</u>
<b>Year Ended December 31, 2017:</b>			
U.S. federal	\$ 332	\$ 140	\$ 472
State and local	87	—	87
	<u>\$ 419</u>	<u>\$ 140</u>	<u>\$ 559</u>

The tax effects of temporary differences that give rise to significant portions of deferred tax assets and the deferred tax liability at December 31, 2019 and 2018 are presented below (in thousands):

	Year Ended December 31,	
	2019	2018
<b>Deferred tax assets:</b>		
Net operating loss carryforwards	\$ 26,078	\$ 18,165
Federal research and development tax credits	28,990	28,283
Share-based compensation	2,704	14,150
Deferred rent	112	300
Accrued compensation	918	680
Charitable contributions	17	15
Leasehold improvements and equipment	643	417
Gross deferred tax assets	<u>59,462</u>	<u>62,010</u>
Less valuation allowance	(59,462)	(62,010)
Total deferred tax assets	<u>\$ —</u>	<u>\$ —</u>

The valuation allowance for deferred tax assets as of December 31, 2019 and 2018 was \$59.5 million and \$62.0 million, respectively. The net change in the total valuation allowance for the years ended December 31, 2019 and 2018 was an increase of \$2.5 million and of \$11.8 million, respectively. In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the scheduled reversal of deferred tax liabilities, projected taxable income, and tax planning strategies in making this assessment. Valuation allowances have been established for the entire amount of the net deferred tax assets as of December 31, 2019 and 2018, due to the uncertainty of future recoverability.

Federal operating loss carryforwards as of December 31, 2019 of approximately \$105.4 million and federal research credit carryforwards of approximately \$29.0 million expire at various dates from 2026 through 2035. Sections 382 and 383 of the Internal Revenue Code limit a corporation's ability to utilize its net operating loss carryforwards and certain other tax attributes (including research credits) to offset any future taxable income or tax if the corporation experiences a cumulative

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ownership change of more than 50% over any rolling three-year period. State net operating loss carryforwards (and certain other tax attributes) may be similarly limited. An ownership change can therefore result in significantly greater tax liabilities than a corporation would incur in the absence of such a change and any increased liabilities could adversely affect the corporation's business, results of operations, financial condition and cash flow.

Based on analysis from its inception through June 30, 2019, the Company experienced Section 382 ownership changes in September 2001 and March 2003 and one of its subsidiaries experienced Section 382 ownership changes in January 2006 and January 2011 and the reported deferred tax assets reflect these expected limitations. These ownership changes limited the Company's ability to utilize federal net operating loss carryforwards (and certain other tax attributes) that accrued prior to the respective ownership changes of the Company and one of its subsidiaries. Additional ownership changes, including the impact of the potential Lumos Merger, may occur in the future as a result of events over which the Company will have little or no control, including purchases and sales of the Company's equity by our 5% stockholders, the emergence of new 5% stockholders, additional equity offerings or redemptions of the Company's stock or certain changes in the ownership of any of the Company's 5% stockholders.

A reconciliation of income taxes at the statutory federal income tax rate to net income tax benefit included in the accompanying statements of operations is set forth in the following table:

	Year ended December 31,		
	2019	2018	2017
U.S. federal income tax benefit at the statutory rate	(21.00)%	(21.00)%	(35.00)%
State income taxes, net of federal taxes	6.08	(10.07)	0.03
Loss in foreign subsidiary	0.75	1.20	7.36
Valuation allowance, including impact of tax reform	15.27	18.20	24.10
Other	(1.07)	0.16	2.80
Total	<u>0.03 %</u>	<u>(11.51)%</u>	<u>(0.71)%</u>

The loss in foreign subsidiary reconciling item in the above table is the tax effect of intercompany research and development expenses which are not deductible on the Company's consolidated federal income tax return. The state income tax benefit item in the above table is the result of the Company filing amendments in 2018 for certain states for 2014 and 2015 and receiving a refund in 2018.

The Company accounts for the effect of any uncertain tax positions based on a more likely than not threshold to the recognition of the tax positions being sustained based on the technical merits of the position under scrutiny by the applicable taxing authority. If a tax position or positions are deemed to result in uncertainties of those positions, the unrecognized tax position is estimated based on a cumulative probability assessment that aggregates the estimated tax liability for all uncertain tax positions. Interest and penalties assessed, if any, are accrued and recorded in either interest expense or miscellaneous expense, respectively in the consolidated statement of operations. The Company has a reserve for uncertain tax positions related to state tax matters of \$653,000 as of December 31, 2019 recorded within Accrued Expenses in the condensed consolidated balance sheet, which includes the accrual of interest and penalties. The Company does not expect the amount to change significantly within the next 12 months. During the years ended December 31, 2019, 2018 and 2017, the Company recorded interest and penalties relating to its uncertain tax position of \$46,000, \$82,000 and \$335,000, respectively. The liability for uncertain tax benefits consists of estimated federal and state income tax liabilities in years for which the statute of limitations is open. Open years range from 2014 through 2019.

There were no changes in the Company's uncertain income tax positions for the year ended December 31, 2019.

The Company does not anticipate the liability for uncertain tax positions as of December 31, 2019 to significantly change in the next 12 months.

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## 10. Loss Per Share

The following table presents the calculations of loss per share:

	Years Ended December 31,		
	2019	2018	2017
<b>Historical net loss per share</b>			
Numerator			
Net loss	\$ (42,989)	\$ (53,595)	\$ (71,951)
Denominator			
Basic and diluted weighted-average shares outstanding	37,294,505	37,191,262	31,304,309
Basic and diluted loss per share	\$ (1.15)	\$ (1.44)	\$ (2.30)

All common stock equivalents are excluded from the computation of diluted loss per share during periods in which losses are reported since the result would be anti-dilutive. For December 31, 2019, anti-dilutive stock options and restricted stock awards excluded from our calculation totaled 3,510,059 and 1,891, respectively. For December 31, 2018, anti-dilutive stock options and restricted stock awards excluded from our calculation totaled 7,978,030 and 68,585.

## 11. Licensing Agreements

The Company is a party to a number of licensing agreements with respect to certain of the technologies that underlie its intellectual property. These agreements typically provide that the Company has exclusive rights to the use and sublicensing of the technologies in question for the duration of the intellectual property patent protection in question, subject to the Company meeting its financial and other contractual obligations under the agreements. The Company recognizes expense under its licensing agreements in the period the obligation is incurred. These agreements typically provide for a license fee based on a percent of sales and annual minimum royalties. For additional information regarding how the Company records payments under these agreements, see Note 2 above. The Company has incurred expense of approximately \$277,000, \$32,000, and \$1.4 million, under all of the in-licensing agreements for the years ended December 31, 2019, 2018, and 2017, respectively, which is recorded as a component of general and administrative expenses.

Under certain license agreements the Company is obligated to make potential milestone payments as listed in the following table. In addition to the milestone payments, each license is paid as a low single-digit percentage of net sales of the licensed product, subject to annual minimum royalties. These obligations are contingent upon achieving the applicable milestone event, the timing of which cannot presently be determined. The milestone payments and royalty payments are in place through at least the expiration of certain of the Company's patents, which is currently 2029 and beyond.

Licensor	Aggregate potential milestone payments
Augusta University Research Institute under AURI IDO	\$2.8 million per licensed product

## 12. Employee Benefit Plans

The Company sponsors a 401(k) plan, which includes a defined contribution feature. The Company's defined contribution was \$342,000, \$261,000, \$361,000 for the years ended December 31, 2019, 2018 and 2017, respectively. The Company made discretionary contributions to the plan of \$55,000, \$303,000, and \$401,000 for the years ended December 31, 2019, 2018 and 2017, respectively.

The Company has approved employment agreements for certain executives, dated September 30, 2019, that provide for the payment of 12 to 24 months of base salary, bonus, and group health insurance premiums plus accrued obligations upon termination of the executive in certain circumstances. The agreements include provisions to accelerate the vesting of stock options subject to certain events including those related to a change in control. The Company entered into the agreements, upon recommendation by the Compensation Committee of the Board of Directors, to align the terms of certain termination benefits with termination terms for executive officers at similarly situated companies to the Company.

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### 13. Restructuring Charges

The Company records liabilities for costs associated with exit or disposal activities in the period in which the liability is incurred. Employee severance costs are accrued when the restructuring actions are probable and estimable. Costs for one-time termination benefits in which the employee is required to render service until termination in order to receive the benefits are recognized ratably over the future service period. The Company also records costs incurred with contract terminations associated with restructuring activities.

On September 30, 2019, the Company adopted a restructuring plan to reduce its headcount by approximately 60%, which consisted primarily of clinical and research and development staff, and made several changes to senior leadership in order to conserve resources.

In addition to the restructuring, Charles J. Link, Jr., M.D. retired from the company and the Board of Directors, effective August 3, 2019 and Nicholas Vahanian retired from his positions as the President and as a member of the Board of Directors, effective September 27, 2019, and retired from the Company on November 11, 2019.

In conjunction with the restructuring and departure of Company executives in 2019, the Company recorded restructuring and severance charges of \$5.6 million during the year ended December 31, 2019 of which \$3.3 million is included within general and administrative expenses and \$2.3 million is included within research and development expenses. As a result of the restructuring, the Company also recorded an impairment charge of \$351,000 relating to fixed assets which management determined had no or limited future use. The fair value of impaired fixed assets was determined based on management's estimate of market resale value.

In July 2018, the Company completed an organizational review of its clinical programs and reduce its headcount by approximately 30% as compared to June 30, 2018 and made several changes to senior leadership effective July 26, 2018 in order to conserve resources to further advance its clinical development programs. Restructuring expenses of \$1.3 million were recorded during 2018, of which \$800,000 is included within general and administrative expenses and \$500,000 is included within the research and development expenses in the condensed consolidated statement of operations.

In July 2017, the Company undertook an organizational realignment to refocus its clinical development efforts and align the Company's resources to focus on the Company's highest value opportunities. The Company's restructuring activities included a reduction of its workforce by approximately 50%, which consisted primarily of clinical and research and development staff, as well as stopping additional research on the Zika virus. Restructuring charges recorded during 2017 included \$1.7 million, of which \$1.1 million is included within general and administrative expenses and \$600,000 is included within research and development expenses in the consolidated statement of operations. The charges include employee severance costs of one-time employee termination benefits and certain expenses related to contractual termination benefits for employees with pre-existing severance arrangements.

The following table shows the amount accrued for restructuring activities which is recorded within Accrued Expenses in the consolidated balance sheet (in thousands):

	<b>Total Employee Severance Cost</b>
Balance as of December 31, 2018	\$ 649
Expensed	5,638
Cash Payments	1,587
Balance as of December 31, 2019	<u>\$ 4,700</u>

### 14. Commitments and Contingencies

From time to time, claims are asserted against the Company arising in the ordinary course of business. In the opinion of management, liabilities, if any, arising from existing claims are not expected to have a material effect on the Company's earnings, financial position, or liquidity.

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On or about May 12, 2016, Trevor Abramson filed a putative securities class action lawsuit in the United States District Court for the Southern District of New York (the Court), captioned Abramson v. NewLink Genetics Corp., et al., Case 1:16-cv-3545 (the Securities Action). Subsequently, the Court appointed Michael and Kelly Nguyen as lead plaintiffs and approved their selection of Kahn, Swick & Foti, LLC as lead counsel in the Securities Action. On October 31, 2016, the lead plaintiffs filed an amended complaint asserting claims under the federal securities laws against the Company, the Company's Chief Executive Officer Charles J. Link, Jr., and the Company's Chief Medical Officer and President Nicholas Vahanian, (collectively, the Defendants). The amended complaint alleges the Defendants made material false and/or misleading statements that caused losses to the Company's investors. The Defendants filed a motion to dismiss the amended complaint on July 14, 2017. On March 29, 2018, the Court dismissed the amended complaint for failure to state a claim, without prejudice, and gave the lead plaintiffs until May 4, 2018 to file any amended complaint attempting to remedy the defects in their claims. On May 4, 2018, the lead plaintiffs filed a second amended complaint asserting claims under the federal securities laws against the Defendants. Like the first amended complaint, the second amended complaint alleges that the Defendants made material false and/or misleading statements or omissions relating to the Phase 2 and 3 trials and efficacy of the product candidate algenpantucel-L that caused losses to the Company's investors. The lead plaintiffs do not quantify any alleged damages in the second amended complaint but, in addition to attorneys' fees and costs, they sought to recover damages on behalf of themselves and other persons who purchased or otherwise acquired the Company's stock during the putative class period of September 17, 2013 through May 9, 2016, inclusive, at allegedly inflated prices and purportedly suffered financial harm as a result. The Defendants filed a motion to dismiss the second amended complaint on July 31, 2018. On February 13, 2019, the Court dismissed the second amended complaint for failure to state a claim, with prejudice, and closed the case. On March 14, 2019, lead plaintiffs filed a notice of appeal. The briefing on lead plaintiffs' appeal was completed in early July 2019 and oral argument before the Second Circuit Court of Appeals was held on October 21, 2019. The Company intends to continue defending the Securities Action vigorously.

On or about April 26, 2017, Ronald Morrow filed a shareholder derivative lawsuit on behalf of the Company in the Court, against the Company's Chief Executive Officer Charles J. Link, Jr., the Company's Chief Medical Officer and President Nicholas Vahanian, and Company directors Thomas A. Raffin, Joseph Saluri, Ernest J. Talarico, III, Paul R. Edick, Paolo Pucci, and Lota S. Zoth (collectively, the Morrow Defendants), captioned Morrow v. Link., et al., Case 1:17-cv-03039 (the Morrow Action). The complaint alleges that the Morrow Defendants caused the Company to issue false statements in its 2016 proxy statement regarding risk management and compensation matters in violation of federal securities law. The complaint also asserts state law claims against the Morrow Defendants for breaches of fiduciary duties, unjust enrichment, abuse of control, insider trading, gross mismanagement, and corporate waste, alleging that the Morrow Defendants made material misstatements or omissions related to the Phase 2 and 3 trials and efficacy of the product candidate algenpantucel-L, awarded themselves excessive compensation, engaged in illegal insider trading, and grossly mismanaged the Company. The plaintiff does not quantify any alleged damages in the complaint but seeks restitution for damages to the Company, attorneys' fees, costs, and expenses, as well as an order directing that proposals for strengthening board oversight be put to a vote of the Company's stockholders. The language for such proposals is not specified in the complaint. The plaintiff also contemporaneously filed a statement of relatedness, informing the Court that the Morrow Action is related to Abramson v. NewLink Genetics Corp., et al., Case 1:16-cv-3545. On May 19, 2017, the plaintiff dismissed the Morrow Action without prejudice. Also on May 19, 2017, plaintiffs' counsel in the Morrow Action filed a new shareholder derivative complaint that is substantively identical to the Morrow Action, except that the plaintiff is Rickey Ely. The latter action is captioned Ely v. Link, et al., Case 17-cv-3799 (the Ely Action). By agreement of the parties and order dated June 26, 2017, the Court temporarily stayed the Ely Action until the Securities Action is dismissed or otherwise finally resolved. Under the terms of the stay, the plaintiff in the Ely Action had until March 15, 2019 (30 days after dismissal of the Securities Action with prejudice) to file an amended derivative complaint or rest upon the current derivative complaint. By further agreement of the parties, dated March 15, 2019, the Ely Action will continue to be stayed pending the outcome of the appeal in the Securities Action. If the Securities Action continues to be dismissed in its entirety following its appeal plaintiff in the Ely Action has agreed to withdraw or dismiss the action, with prejudice. The Company disputes the claims in the Ely Action and intends to defend against them vigorously.

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**15. Quarterly Financial Information (Unaudited)**

	First	Second	Third	Fourth
	(In thousands, except per share data)			
<b>Year Ended December 31, 2019</b>				
Grant and licensing revenue	\$ 106	\$ 151	\$ 246	\$ 433
Loss from operations	(10,664)	(10,724)	(15,057)	(8,689)
Net loss	(10,036)	(10,134)	(14,548)	(8,271)
Basic and diluted loss per share	\$ (.27)	\$ (.27)	\$ (.39)	\$ (.22)
<b>Year Ended December 31, 2018</b>				
Grant and licensing revenue	\$ 9,900	\$ 2,252	\$ 120	\$ 202
Loss from operations	(18,706)	(17,748)	(15,038)	(10,946)
Net loss	(18,310)	(17,313)	(7,403)	(10,569)
Basic and diluted loss per share	\$ (.49)	\$ (.47)	\$ (.20)	\$ (.28)

**DESCRIPTION OF THE REGISTRANT'S SECURITIES  
REGISTERED PURSUANT TO SECTION 12 OF THE  
SECURITIES EXCHANGE ACT OF 1934**

*NewLink Genetics Corporation (the "Company", "NewLink", "we", "our" or "us") has one class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"): our common stock. The following summary of the terms of our common stock, is based upon our amended and restated certificate of incorporation (the "Charter") and our amended and restated bylaws (the "Bylaws"). This summary does not purport to be complete and is subject to, and is qualified in its entirety by express reference to, the applicable provisions of our Charter and our Bylaws, which are filed as exhibits to our Annual Report on Form 10-K, of which this Exhibit 4.4 is a part, and are incorporated by reference herein. We encourage you to read our Charter, our Bylaws and the applicable provisions of the Delaware General Corporation Law (the "DGCL") for more information.*

**General**

Under our Charter, we are authorized to issue up to 75,000,000 shares of common stock, par value \$0.01 per share, and 5,000,000 shares of our preferred stock, par value \$0.01 per share. Our board of directors may establish the rights and preferences of the preferred stock from time to time. As of December 31, 2019, we had outstanding 37,325,091 shares of common stock and no shares of preferred stock outstanding or designated.

**NewLink's common stock*****Voting Rights***

Each holder of common stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders, including the election of directors, other than any amendment to the Charter that relates solely to the terms of one or more outstanding series of preferred stock, except as otherwise required by law. Our Charter and our Bylaws do not provide for cumulative voting rights. Because of this, the holders of a majority of the shares of our common stock 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 preferences that may apply to any outstanding preferred stock, holders of our common stock are entitled to receive ratably any dividends that our board of directors may declare out of funds legally available for that purpose on a non-cumulative basis.

***Liquidation***

In the event of our liquidation, dissolution or winding up, holders of our common stock are entitled to share ratably in all assets remaining after payment of liabilities and the liquidation preference of any outstanding preferred stock.

***Rights and Preferences***

Holders of our common stock have no preemptive, conversion, subscription or other rights, and there are no redemption or sinking fund provisions applicable to our common stock. The rights, preferences and privileges of the holders of our common stock are subject to and may be adversely affected by the rights of the holders of shares of any series of our preferred stock that we may designate in the future.

## **Transfer Agent**

The transfer agent and registrar for our common stock is Computershare Shareowners Services, LLC.

## **Listing**

Our common stock is listed on Nasdaq under the symbol "NLNK."

## **Anti-Takeover Effects of Provisions of NewLink Charter Documents**

Among other things, our Charter and our Bylaws provide for the following:

Our board of directors may issue up to 5,000,000 shares of our preferred stock, with such rights, preferences and privileges as the board of directors may designate.

The personal liability for monetary damages of our directors to us and to our stockholders is limited to the fullest extent permitted by applicable law, including, without limitation, the DGCL. This provision may reduce the likelihood of derivative litigation against directors and may discourage or deter stockholders or management from bringing a lawsuit against directors for breach of their fiduciary duty.

Special meetings of stockholders may only be called by our board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors, the chairman of the board of directors, or the chief executive officer. In addition, our Bylaws establish procedures, including requirements for advance written notice and the form and content for stockholder notices, with regard to the nomination of candidates for election as directors and stockholder proposals. These provisions may delay or preclude stockholders from bringing matters before a meeting of stockholders or from making nominations for directors at a meeting of stockholders, which could delay or deter takeover attempts or changes in management.

Our board of directors is divided into three classes of directors, with each class serving staggered three-year terms. As a result, approximately one-third of the board of directors will be elected each year. The classified board provision could have the effect of discouraging a third party from making a tender offer or attempting to obtain control of us. In addition, the classified board provision could delay stockholders who do not agree with the policies of the board of directors from removing a majority of the board of directors for two years.

Our Charter does not provide for cumulative voting for our directors. The absence of cumulative voting may make it more difficult for stockholders owning less than a majority of our stock to elect any directors to our board of directors. In addition, directors may be removed only for cause, and removal requires the affirmative vote of the holders of 66 2/3% of our voting stock.

Subject to the rights of the holders of any outstanding series of our preferred stock, all vacancies, including newly created directorships, may, except as otherwise required by law, be filled only by the affirmative vote of a majority of our directors then in office, even if less than a quorum, unless the board of directors determines by resolution that any such vacancies will be filled by the stockholders. In addition, the authorized number of directors may be changed only by resolution of our board of directors.

Stockholders are permitted to amend our Bylaws only upon receiving at least 66 2/3% of the votes entitled to be cast by holders of all outstanding shares then entitled to vote generally in the election of directors, voting together as a single class.

The combination of these provisions will make it more difficult for our existing stockholders to replace our board of directors as well as for another party to obtain control of us by replacing our board of directors. Because our board of directors has the power to retain and discharge our officers, these provisions could also make it more difficult for existing stockholders or another party to effect a change in management. In addition, the authorization of undesignated preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to change our control.

These provisions are intended to enhance the likelihood of continued stability in the composition of our board of directors and its policies and to discourage coercive takeover practices and inadequate takeover bids. These

provisions are also designed to reduce our vulnerability to hostile takeovers and to discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for our shares and may have the effect of delaying changes in our control or management. As a consequence, these provisions may also inhibit fluctuations in the market price of our stock that could result from actual or rumored takeover attempts. We believe that the benefits of these provisions, including increased protection of our potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure our company, outweigh the disadvantages of discouraging takeover proposals, because negotiation of takeover proposals could result in an improvement of their terms.

### **Anti-Takeover Effects of Delaware Law**

We are subject to Section 203 of the DGCL, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder, with the following exceptions:

- before such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding, but not the outstanding voting stock owned by the interested stockholder, those shares owned (i) by persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines a “business combination” to include the following:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits by or through the corporation.

In general, Section 203 defines an “interested stockholder” as an entity or person who, together with the entity or person’s affiliates and associates, beneficially owns, or is an affiliate or associate of the corporation and within three years prior to the time of determination of interested stockholder status did own, 15% or more of the outstanding voting stock of the corporation.



**EXECUTION COPY**

**LICENSE AND COLLABORATION AGREEMENT**

This License and Collaboration Agreement (this “**Agreement**”) is effective as of November 21, 2014 (the “**Effective Date**”), and is entered into by and between **MERCK SHARP & DOHME CORP.**, a corporation organized and existing under the laws of New Jersey (“**Merck**”), and **BIOPROTECTION SYSTEMS CORPORATION**, a corporation organized and existing under the laws of Delaware (“**NewLink**”) and a wholly owned subsidiary of **NEWLINK GENETICS CORPORATION**, a corporation organized and existing under the laws of Delaware (“**NL**”), and for purposes of Section 10.19, NL.

**RECITALS:**

**WHEREAS**, NewLink is currently developing a rVSV-EBOV (Ebola) vaccine; and

**WHEREAS**, NewLink and Merck desire to enter into a collaboration in order to research, develop, manufacture and commercialize Compounds (as hereinafter defined) and Products (as hereinafter defined), upon the terms and conditions set forth herein; and

**WHEREAS**, NewLink desires to grant to Merck licenses under the NewLink Patent Rights (as hereinafter defined) and NewLink Know-How (as hereinafter defined) to research, develop, manufacture and commercialize Compounds and Products upon the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, Merck and NewLink hereby agree as follows:

**Article 1      DEFINITIONS**

Unless specifically set forth to the contrary herein, the following terms shall have the respective meanings set forth below.

1.1 “**AAA**” shall have the meaning given to such term in Section 10.6.1.

1.2 “**Act**” means, as applicable, the United States Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301 et seq., and/or the Public Health Service Act, 42 U.S.C. §§ 262 et seq., in each case, as such may be amended from time to time.

1.3 “**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by or is under common control with such Person. A Person shall be deemed to control another Person if such Person possesses the power to direct or cause the direction of the management, business and policies of such Person, whether through the ownership of more than fifty percent (50%) of the voting securities of such Person, by contract or otherwise.

1.4 “**Agreement**” shall have the meaning given to such term in the preamble.

1.5 “**Agreement Payments**” shall have the meaning given to such term in Section 5.6.1.

1.6 “**Alliance Manager**” shall have the meaning given to such term in Section 2.8.

1.7 “**Alternative Product**” shall have the meaning given to such term in Section 8.2.2.

1.8 “**Applicable Laws**” means any and all applicable laws of any jurisdiction which are applicable to any of the Parties or their respective Affiliates in carrying out activities hereunder or to which any of the Parties or their respective Affiliates in carrying out the activities hereunder is subject, and shall include all statutes, enactments, acts of legislature, laws, ordinances, rules, regulations, notifications, guidelines, policies, directions, directives and orders of any statutory authority, tribunal, board, or court or any central or state government or local authority or other governmental entity in such jurisdictions, including the Act and GLPs, GCPs and GMPs.

1.9 “[\*\*]” shall have the meaning given to such term in Section 3.10.3.

1.10 “**Biosimilar Application**” shall have the meaning given to such term in Section 7.4.5(b).

1.11 “**BLA**” means a New Drug Application, Biologics License Application, Worldwide Marketing Application, Marketing Authorization Application, filing pursuant to Section 510(k) of the Act, Premarket Approval Application or similar application or submission for Marketing Authorization of a Product filed with a Regulatory Authority to obtain

marketing approval for a biological, pharmaceutical or diagnostic product in that country or in that group of countries.

- 1.12 “**Calendar Quarter**” means the respective periods of three (3) consecutive calendar months ending on March 31, June 30, September 30 and December 31; provided, however, that (i) the first Calendar Quarter of this Agreement shall commence on the Effective Date and end at the end of the Calendar Quarter in which the Effective Date occurs and (ii) the last Calendar Quarter of this Agreement shall commence at the commencement of such Calendar Quarter and end on the date of expiration or termination of this Agreement.
- 1.13 “**Calendar Year**” means each successive period of twelve (12) months commencing on January 1 and ending on December 31; provided, however, that (i) the first Calendar Year of this Agreement shall commence on the Effective Date and end on December 31 of the same year and (ii) the last Calendar Year of this Agreement shall commence on January 1 of the Calendar Year in which this Agreement terminates or expires and end on the date of expiration or termination of this Agreement.
- 1.14 “**Change of Control**” means, with respect to Merck, NL or NewLink, as applicable, a transaction with a Third Party(ies) involving, (i) the acquisition, merger or consolidation, directly or indirectly, of Merck, NL or NewLink, as applicable, and, immediately following the consummation of such transaction, the shareholders of Merck, NL or NewLink, as applicable, immediately prior thereto hold, directly or indirectly, as applicable, shares of capital stock of the surviving company representing less than fifty percent (50%) of the outstanding shares of such surviving or continuing company, (ii) the sale of all or substantially all of the assets or business of Merck, NL or NewLink, as applicable, or (iii) a Person, or group of Persons acting in concert, acquire more than fifty percent (50%) of the voting equity securities or management control of Merck, NL or NewLink, as applicable.
- 1.15 “**Clinical Trial**” means a Phase I Clinical Trial, Phase II Clinical Trial, Phase III Clinical Trial, and/or post-regulatory approval clinical trial involving human subjects.
- 1.16 “**Code**” shall have the meaning given to such term in Section 8.3.3.
- 1.17 “**Combination Product**” means a Product which includes one or more Compound(s) in combination with one or more active ingredients other than such Compound(s), [\*\*]; provided, however, nothing contained in this Agreement shall be interpreted as a grant of

a license by NewLink to Merck to any other proprietary active compounds of NewLink (other than Compounds).

- 1.18 “**Commercialize**” means to promote, market, distribute, sell and provide product support for a Product, and “**Commercializing**” and “**Commercialization**” shall have correlative meanings.
- 1.19 “**Commercially Reasonable Efforts**” means with respect to the efforts to be expended by a Party with respect to any objective, the [\*\*]. It is understood and agreed that with respect to the Development, Manufacture and Commercialization of Product by either Party, such efforts [\*\*] and [\*\*] taking into account [\*\*] and other [\*\*]. Commercially Reasonable Efforts shall be [\*\*], and it is [\*\*], and [\*\*].
- 1.20 “**Competitor**” shall have the meaning given to such term in Section 10.2.3.
- 1.21 “**Compound**” means (i) the Current Compound and (ii) [\*\*], including [\*\*], in each case, [\*\*], and in each case of this clause (ii) [\*\*].
- 1.22 “**Confidential Information**” means any and all proprietary Know-How, information and data, including scientific, pre-clinical, clinical, regulatory, manufacturing, marketing, financial and commercial information or data, whether communicated in writing or orally or by any other method, which is provided by or on behalf of one Party to the other Party and/or its Affiliate in connection with this Agreement.
- 1.23 “**Control**”, “**Controls**” or “**Controlled by**” means, with respect to any Patent Rights, Know-How or other intellectual property assets or rights, as applicable, the possession of (whether by ownership or license or other right, other than pursuant to this Agreement) or the ability of a Party to grant access to, or a license or sublicense of, such items or right as provided for herein without violating the terms of any agreement or other arrangement with any Third Party existing at the time such Party would be required hereunder to grant the other Party such access or license or sublicense.
- 1.24 “**Covered by**” or “**Cover**” or the like, means, with respect to a given Product in a given country, that [\*\*] is claimed by a Valid Claim in such country and such Valid Claim would be infringed by the sale of such Product in such country but for the licenses granted to Merck hereunder; provided, that [\*\*] for which [\*\*] has been [\*\*], and [\*\*] is actually [\*\*].
- 1.25 “**Critical Issue**” shall have the meaning given to such term in Section 2.7.2.

- 1.26 “**Current Compound**” means the [\*\*] vaccine candidate known as rVSV-EBOV and more particularly described on Schedule 1.26.
- 1.27 “**Current Product**” means the [\*\*] pharmaceutical composition or preparation (in any and all dosage forms) containing the Current Compound (in any suspension buffer or any lyophilized version thereof), as the sole active ingredient, for the treatment of Ebola through any route of administration other than oral administration, but excluding, for clarity, any Combination Product.
- 1.28 “**Current Product Commercially Reasonable Efforts Obligation**” shall have the meaning given to such term in Section 3.5.1.
- 1.29 “[\*\*]” shall have the meaning given to such term in [\*\*].
- 1.30 “**Develop**” means to research, develop, analyze, test and conduct preclinical, clinical and all other regulatory trials for Compound or a Product, as well as any and all activities pertaining to manufacturing development, formulation development, manufacturing scale-up and lifecycle management, including new indications, new formulations and all other activities related to securing and maintaining Marketing Authorization for a Product, including pre- and post-Marketing Authorization regulatory activities in connection with a Product. “**Developing**” and “**Development**” shall have correlative meanings.
- 1.31 “**Dollar**” or “**\$**” means United States dollars.
- 1.32 “**Effective Date**” shall have the meaning given to such term in the preamble.
- 1.33 “**EU**” or “**European Union**” means (a) the European Union and its member states as of the Execution Date, which are: Austria, Belgium, Bulgaria, Croatia, Cyprus , Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom, and (b) each of their successors to the extent such successors occupy the same territory and are included as part of the European Union.
- 1.34 “**Excluded Claim**” shall have the meaning given to such term in Section 10.6.6.
- 1.35 “**Existing Confidentiality Agreement**” means that certain Confidential Disclosure Agreement, dated [\*\*], between Merck and NewLink.
- 1.36 “**Existing IND**” shall have the meaning given to such term in Section 2.9.2.

- 1.37 “**FDA**” means the United States Food and Drug Administration or any successor governmental authority having substantially the same function.
- 1.38 “**Field**” means any and all uses or purposes, including the treatment, palliation, diagnosis or prevention of any human or animal disease, disorder or condition.
- 1.39 “**First Commercial Sale**” means, with respect to a Product in a given country in the Territory, the first shipment to a Third Party of commercial quantities of such Product sold in such country to such Third Party on arm’s length terms by Merck, its Affiliate or sublicensee for end use or consumption of such Product in the Field in such country (following, in all cases, the receipt of Marketing Authorization for such Product in such country). For clarity, First Commercial Sale shall be determined on a Product-by-Product basis.
- 1.40 “**GAVI Alliance**” means the Global Alliance for Vaccines and Immunization (GAVI), an independent non-profit organization established under the laws of Switzerland, with the purpose of providing support for improvements of vaccinations and immunization in the poorest countries of the world.
- 1.41 “**GAVI Eligible Countries**” means all countries which are deemed GAVI-eligible countries by the GAVI Alliance, as such [\*\*]; provided that in no event [\*\*]. For the avoidance of doubt, [\*\*] shall, following [\*\*].
- 1.42 “**Good Clinical Practices**” or “**GCPs**” means then-current Good Clinical Practices as such term is defined from time to time by the FDA and governmental authorities in the European Union, pursuant to its regulations, guidelines or otherwise.
- 1.43 “**Good Laboratory Practice**” or “**GLPs**” means then-current standards for laboratory activities for pharmaceuticals or biologicals, as applicable, as defined from time to time by the FDA and governmental authorities in the European Union, pursuant to its regulations, guidelines or otherwise.
- 1.44 “**Good Manufacturing Practices**” or “**GMPs**” means then current Good Manufacturing Practices as such term is defined from time to time by the FDA and governmental authorities in the European Union, pursuant to its regulations, guidelines or otherwise.
- 1.45 “**Human Materials**” shall have the meaning given to such term in Section 2.3.2.
- 1.46 “**IND**” means an Investigational New Drug application, Clinical Study Application, Clinical Trial Exemption or similar application or submission for approval to conduct

human clinical investigations filed with or submitted to a Regulatory Authority in conformance with the requirements of such Regulatory Authority.

1.47 “**Indemnified Party**” shall have the meaning given to such term in Section 9.1.3.

1.48 “**Indemnifying Party**” shall have the meaning given to such term in Section 9.1.3.

1.49 “**Initiation**” means, with respect to a Clinical Trial, the administration of the first dose of the Current Product (or an Alternative Product, as applicable) to a properly enrolled patient in such Clinical Trial.

1.50 “**Insolvency Event**” shall have the meaning given to such term in Section 8.3.1(b).

1.51 “**Inventory**” shall have the meaning given to such term in Section 2.9.3(a).

1.52 “**Joint Program Know-How**” shall have the meaning given to such term in Section 7.2.1(c).

1.53 “**Joint Program Patent Rights**” shall have the meaning given to such term in Section 7.2.1(c).

1.54 “**Joint Steering Committee**” or “**JSC**” means the joint steering committee established to oversee the activities hereunder as more fully described in Section 2.6.

1.55 “**Know-How**” means any and all proprietary information and materials, including discoveries, improvements, processes, methods, protocols, formulas, molecular constructs, cell lines, reagents, assays, data, seeds (including pre-seeds, master seeds and working seeds), cell banks (including master cell banks and working cell banks), clones, primers, vectors, antibodies, serum samples, biological samples, results, inventions, know-how, trade secrets, compositions of matter (including compounds), formulations, and findings, in each case, patentable or otherwise.

1.56 “**Liabilities**” shall have the meaning given to such term in Section 9.1.1.

1.57 “**Manufacture**” or “**Manufacturing**” means, with respect to a compound or product, including a Compound, Product and any other active pharmaceutical ingredient in a Product, the receipt, handling and storage of active pharmaceutical ingredients and other materials, the manufacturing, processing, packaging and labeling (excluding the development of packaging and labeling components for Marketing Authorization), holding (including storage), quality assurance and quality control testing (including release and stability) of such compound or product (other than quality assurance and

quality control related to development of the manufacturing process, which activities shall be considered Development activities) and shipping of such compound or product.

1.58 “**Manufacturing Consultation**” shall have the meaning given to such term in Section 2.9.3(b).

1.59 “**Marketing Authorization**” means all approvals (including BLA approval, as applicable) from the relevant Regulatory Authority necessary to market and sell a Product in any country (including all applicable Price Approvals even if not legally required to sell Product in a country).

1.60 “**Merck**” shall have the meaning given to such term in the preamble.

1.61 “**Merck Background Know-How**” means all Know-How which (i) is in the Control of Merck or its Affiliates as of the Effective Date or during the Term, (ii) is not in the public domain, and (iii) [\*\*]; provided, however, that Merck Background Know-How shall not include any Program Know-How.

1.62 “**Merck Background Patent Rights**” means Patent Rights that (i) are in the Control of Merck or its Affiliates as of the Effective Date or during the Term, and (ii) claim, cover or disclose Merck Background Know-How; provided, however that Merck Background Patent Rights shall not include any Program Patent Rights.

1.63 “**Merck Indemnitees**” shall have the meaning given to such term in Section 9.1.2.

1.64 “**Merck Know-How**” means (i) all Merck Background Know-How and (ii) all Merck Program Know-How Controlled by Merck or any of its Affiliates.

1.65 “**Merck Patent Rights**” means (i) all Merck Background Patent Rights and (ii) all Merck Program Patent Rights Controlled by Merck or any of its Affiliates.

1.66 “**Merck Program Know-How**” shall have the meaning given to such term in Section 7.2.1(b).

1.67 “**Merck Program Patent Rights**” shall have the meaning given to such term in Section 7.2.1(b).

1.68 “**Milestone Event**” shall have the meaning given to such term in Section 5.2.

1.69 “**Milestone Payment**” shall have the meaning given to such term in Section 5.2.

1.70 “**NewLink**” shall have the meaning given to such term in the preamble.

- 1.71 “**NewLink Canada License**” means, collectively, (i) that certain Sole License Agreement for Recombinant Vesicular Stomatitis Virus Vaccines For Viral Hemorrhagic Fevers, between Her Majesty the Queen in Right of Canada (as represented by the Minister of Health, acting through the Public Health Agency of Canada (“**Public Health Canada**”)) and NewLink, dated as of [\*\*], and (ii) [\*\*] between Public Health Canada and NewLink dated as of [\*\*], in each case, as the foregoing may be further amended in accordance with Section 3.1.3.
- 1.72 “**NewLink Existing Funding Agreements**” means the agreements set forth on Schedule 1.72.
- 1.73 “**NewLink Existing Manufacturing Agreements**” means the agreements set forth on Schedule 1.73.
- 1.74 “**NewLink Existing Third Party Agreements**” means (i) the NewLink Canada License, (ii) the NewLink Existing Manufacturing Agreements, and (iii) the NewLink Existing Funding Agreements.
- 1.75 “**NewLink Funding Agreements**” shall have the meaning given to such term in Section 3.10.1.
- 1.76 “**NewLink Future Funding Agreements**” shall have the meaning given to such term in Section 3.10.1.
- 1.77 “**NewLink Indemnitees**” shall have the meaning given to such term in Section 9.1.1.
- 1.78 “**NewLink Know-How**” means all Know-How which (i) is in the Control of NewLink or its Affiliates as of the Effective Date or during the Term (subject to Section 10.2), (ii) is not in the public domain, and (iii) [\*\*] is otherwise [\*\*]. For the avoidance of doubt, NewLink Know-How shall include (x) any and all Know-How licensed under the NewLink Canada License, (y) all NewLink Program Know-How and (z) NewLink’s interest in any Joint Program Know-How.
- 1.79 “**NewLink Patent Rights**” means Patent Rights that (i) are in the Control of NewLink or its Affiliates as of the Effective Date or during the Term (subject to Section 10.2), and (ii) (a) claim, cover or disclose [\*\*], and/or (b) claim, cover or disclose any NewLink Know-How. The NewLink Patent Rights shall include the Patent Rights identified in Schedule 1.79 as well as any Patent Rights licensed under the NewLink Canada License. Schedule 1.79 may be updated by the Parties from time to time as provided in Section 3.2.

NewLink Patent Rights shall include (x) NewLink Program Patent Rights and (y) NewLink's interest in any Joint Program Patent Rights.

1.80 "**NewLink Program Know-How**" shall have the meaning given to such term in Section 7.2.1(a).

1.81 "**NewLink Program Patent Rights**" shall have the meaning given to such term in Section 7.2.1(a).

1.82 "**NewLink Third Party Agreements**" means (i) the NewLink Existing Third Party Agreements, (ii) any other agreements [\*\*] relating to the Development, Manufacture, Commercialization or other exploitation of Compounds or Products, including any agreements [\*\*] or the [\*\*], and (iii) any NewLink Funding Agreement [\*\*] and any agreement included on Schedule 3.10.

1.83 "**NIH-Liberia Clinical Trial**" means the Clinical Trial which is [\*\*], and which [\*\*].

1.84 "**Officials**" shall have the meaning given to such term in Section 2.5.2.

1.85 "**Other Product Commercially Reasonable Efforts Obligation**" shall have the meaning given to such term in Section 3.5.1.

1.86 "[\*\*]" shall have the meaning given to such term in [\*\*].

1.87 "**Party**" means Merck or NewLink, individually, and "**Parties**" means Merck and NewLink, collectively.

1.88 "**Payment**" shall have the meaning given to such term in Section 2.5.2.

1.89 "**Patent Rights**" means any and all patents and patent applications in the Territory (which for the purpose of this Agreement shall be deemed to include certificates of invention and applications for certificates of invention), including divisionals, continuations, continuations-in-part, reissues, renewals, substitutions, registrations, re-examinations, revalidations, extensions, supplementary protection certificates, and the like of any such patents and patent applications, and foreign equivalents of the foregoing.

1.90 "**Person**" means any individual, partnership, joint venture, limited liability company, corporation, firm, trust, association, unincorporated organization, governmental authority or agency, or any other entity not specifically listed herein.

1.91 "**Phase I Clinical Trial**" means a human clinical trial in any country that would satisfy the requirements of 21 CFR 312.21(a).

1.92 “**Phase II Clinical Trial**” means a human clinical trial in any country that would satisfy the requirements of 21 CFR 312.21(b).

1.93 “**Phase III Clinical Trial**” means a human clinical trial in any country that would satisfy the requirements of 21 CFR 312.21(c).

1.94 “**Pivotal Clinical Trial**” means the first to occur of (i) [\*\*] or (ii) [\*\*] which is [\*\*] of the [\*\*] for clarity, any [\*\*].

1.95 “**Price Approvals**” means in countries in the Territory where Regulatory Authorities may approve or determine pricing or pricing reimbursement for pharmaceutical products, such approval or determination.

1.96 “**Product**” means any pharmaceutical composition or preparation (in any and all dosage forms) in final form containing a Compound, including any Combination Product, for sale or use by prescription, over-the-counter or any other method. For clarity, except with respect to the Current Product (which is specifically defined herein), different formulations or dosage strengths of a given Product containing the same Compound shall be considered the same Product for the purposes of this Agreement.

1.97 “**Product Diligence Obligations**” shall have the meaning given to such term in Section 3.5.1.

1.98 “**Product Materials**” shall have the meaning given to such term in Section 6.2.21.

1.99 “**Product Net Sales**” means the gross invoice price (not including value added taxes, sales taxes, or similar taxes) of Product in the Royalty Bearing Territory for use in the Field sold by Merck or its Related Parties to the first Third Party after deducting, if not previously deducted, from the amount invoiced or received:

(a) [\*\*];

(b) [\*\*];

(c) [\*\*] that are [\*\*];

(d) [\*\*]; or any other [\*\*]; provided, that for clarity, nothing in this clause (d) shall be deemed to exclude [\*\*] to the [\*\*];

(e) [\*\*];

(f) [\*\*], including [\*\*]; provided that any such [\*\*];

(g) [\*\*] of the [\*\*] and [\*\*]; and

(h) [\*\*].

Product Net Sales shall not include (i) sales of Product at low or no margin and/or (ii) sales, transfers or other dispositions of Product for test marketing, sampling, promotional, charitable, compassionate use (or similar programs), donations (for example, to non-profit institutions or government agencies), pre-clinical, clinical or regulatory purposes.

With respect to sales of Combination Products, Product Net Sales shall be calculated on the basis of [\*\*]. In the event that a Product is sold only as a Combination Product, Product Net Sales shall be calculated on the basis of [\*\*] and the [\*\*]. [\*\*] shall be determined [\*\*]. The deductions set forth above will be applied in calculating Product Net Sales for a Combination Product. In the event that a Product is sold only as a Combination Product and [\*\*] to the [\*\*], the Parties shall [\*\*].

1.100 “**Program Know-How**” means any Know-How (including any Compounds) that is first conceived, discovered, made and/or reduced to practice (as would be necessary to establish inventorship under United States patent law (regardless of where the applicable activities occurred)) by or on behalf of either Party or its Affiliate (or their respective employees, agents or consultants) or jointly by both Parties or their respective Affiliates (or their respective employees, agents or consultants) in performing the Transition Program or other activities under this Agreement.

1.101 “**Program Patent Rights**” means any and all Patent Rights that claim, cover or disclose Program Know-How.

1.102 “**Project Leader**” shall have the meaning given to such term in Section 2.8.

1.103 “**Prosecute**” means, in relation to any Patent Rights, (i) to prepare and file patent applications, including re-examinations or re-issues thereof, and represent applicant(s) or assignee(s) before relevant patent offices or other relevant authorities during examination, re-examination and re-issue thereof, in appeal processes and interferences, oppositions or any equivalent proceedings, (ii) to secure the grant of any Patent Rights arising from such patent application, (iii) to maintain in force any issued Patent Right (including through payment of any relevant maintenance fees), and (iv) to make all decisions with regard to any of the foregoing activities. “**Prosecution**” has a corresponding meaning.

1.104 “**Providers**” shall have the meaning given to such term in Section 2.3.2.

- 1.105 “**Regulatory Authority**” means any applicable government regulatory authority involved in granting approvals for the manufacturing, marketing, reimbursement and/or pricing of a pharmaceutical product in the Territory, including, in the United States, the FDA.
- 1.106 “**Regulatory Documentation**” shall have the meaning given to such term in Section 2.9.2.
- 1.107 “**Related Party**” means each of Merck, its Affiliates, and their respective sublicensees (which term does not include distributors), as applicable.
- 1.108 “**Royalty Bearing Territory**” means the Territory excluding (i) those countries (and their territories and possessions) in Africa and (ii) GAVI Eligible Countries (and their territories and possessions).
- 1.109 “**Royalty Term**” shall have the meaning given to such term in Section 5.4.2.
- 1.110 “**rVSV**” means the replication-competent recombinant vesicular stomatitis virus vector system.
- 1.111 “**Safety Termination**” shall have the meaning given to such term in Section 8.2.1.
- 1.112 “**Sensitive Information**” shall have the meaning given to such term in Section 10.2.3.
- 1.113 “**Term**” shall have the meaning given to such term in Section 8.1.
- 1.114 “**Terminated Products**” shall have the meaning given to such term in Section 8.3.2(a).
- 1.115 “**Territory**” means worldwide, including all of the countries in the world, and their territories and possessions.
- 1.116 “**Third Party**” means a Person other than Merck and its Affiliates, NL and its Affiliates and NewLink and its Affiliates.
- 1.117 “**Third Party Claim**” shall have the meaning given to such term in Section 9.1.1.
- 1.118 “**Third Party Funding Sources**” means Third Party funding sources, including [\*\*] and [\*\*] with respect to the Development, Manufacture and/or Commercialization of Compound and/or Product.
- 1.119 “**Transfer Taxes**” shall have the meaning given to such term in Section 5.6.1.
- 1.120 “**Transition Period**” shall mean the period commencing on the Effective Date and ending upon the later to occur of (i) completion of all activities under the Transition Plan,

or (ii) [\*\*]; provided that in no event shall the Transition Period end later than [\*\*] unless [\*\*], as applicable, [\*\*], in which case the Transition Period shall continue [\*\*], until such time as [\*\*] in accordance with the terms of this Agreement.

- 1.121 “**Transition Plan**” means the plan for transitioning [\*\*] activities with respect to [\*\*] from NewLink to Merck, as such plan is established by the JSC in accordance with this Agreement, and as such plan may be updated from time to time in accordance with this Agreement.
- 1.122 “**Transition Plan Outline**” means the outline for the plan for transitioning [\*\*] activities with respect to Compound and Product as set forth on Schedule 1.122.
- 1.123 “**Transition Program**” means the conduct of certain ongoing [\*\*] activities by or on behalf of NewLink with respect to [\*\*], and the transition of such activities to Merck, as set forth in Article 2 and in the Transition Plan.
- 1.124 “**Tri-Party Confidentiality Agreement**” means that certain Confidentiality and Non-Disclosure Agreement, dated [\*\*], between Public Health Canada, Merck, NewLink and NL.
- 1.125 “**Valid Claim**” means a claim of an issued and unexpired patent (as may be extended through supplementary protection certificate or patent term extension) within the NewLink Patent Rights, which claim has not been abandoned or revoked, held invalid or unenforceable by a patent office, court or other governmental agency of competent jurisdiction in a final and non-appealable judgment (or judgment from which no appeal was taken within the allowable time period), and has not been disclaimed, denied or admitted to be invalid or unenforceable through reissue, re-examination or disclaimer or otherwise.
- 1.126 “**Violation**” means that a Party or any of its officers or directors or any other NewLink personnel (or other permitted agents of a Party performing activities hereunder) has been: (1) convicted of any of the felonies identified among the exclusion authorities listed on the U.S. Department of Health and Human Services, Office of Inspector General (OIG) website, including 42 U.S.C. 1320a-7(a) (<http://oig.hhs.gov/exclusions/authorities.asp>); (2) identified in the OIG List of Excluded Individuals/Entities (LEIE) database (<http://exclusions.oig.hhs.gov/>) or listed as having an active exclusion in the System for Award Management (<http://www.sam.gov>); or (3) listed by any US Federal agency as being suspended, proposed for debarment, debarred, excluded or otherwise ineligible to participate in Federal procurement or non-procurement programs, including under 21

U.S.C. 335a ([http://www.fda.gov/ora/compliance\\_ref/debar/](http://www.fda.gov/ora/compliance_ref/debar/)) (each of (1), (2) and (3) collectively the “**Exclusions Lists**”).

## ARTICLE 2 TRANSITION PROGRAM

**2.1 General.** Each Party, at such Party’s cost, shall engage in the Transition Program upon the terms and conditions set forth in this Agreement, including performing all activities to be performed by such Party as set forth in the Transition Plan.

**2.2 Transition Plan; Conduct of Transition Program.** Within [\*\*] after the Effective Date, the Parties shall establish the initial Transition Plan which shall be based on the Transition Plan Outline. Each Party shall, [\*\*] perform its activities under the Transition Program, including by using its good faith, diligent efforts to allocate sufficient time, effort, equipment and facilities to the Transition Program and to use personnel with sufficient skills and experience as are required to accomplish the Transition Program in accordance with the terms of this Agreement and the Transition Plan, as applicable. Merck shall be prepared to receive, and NewLink shall promptly deliver to Merck, [\*\*] pursuant to and as set forth in the Transition Plan or [\*\*]. In performing activities under the Transition Program, NewLink shall consult with Merck and shall [\*\*] with respect to the activities conducted under the Transition Program, including [\*\*], subject to Section 3.10.2 with respect to the activities under NewLink Funding Agreements and subject to Section 2.7.2 with respect to amendments of the Transition Plan.

### **2.3 Compliance; Additional Requirements.**

**2.3.1 General.** Each Party shall conduct its activities hereunder, including activities under the Transition Program and activities under the NewLink Funding Agreements, in compliance with all Applicable Laws. Each Party shall notify the other in writing of any deviations from Applicable Laws. In addition, each Party hereby certifies that it has not employed or otherwise used in any capacity and will not employ or otherwise use in any capacity, the services of any Person suspended, proposed for debarment, or debarred under United States law, including 21 USC 335a, or any foreign equivalent thereof, in performing any portion of the Transition Program or other activities under this Agreement (including activities under the NewLink Funding Agreements). Each Party shall notify the other in writing immediately if any such suspension, proposed debarment or debarment occurs or comes to its attention, and shall, with respect to any Person so suspended, proposed for debarment or debarred, promptly remove such Person from performing any Transition Program activities, function or

capacity related to the Transition Program or any other activities under this Agreement (including activities under the NewLink Funding Agreements).

**2.3.2 Use of Human Materials.** Without limiting the provisions of Section 2.3.1, if any human cell lines, serum samples, biological samples, tissue, human clinical isolates or similar human-derived materials (“**Human Materials**”) have been or are to be collected and/or used in the Transition Program (or under the NewLink Funding Agreements), NewLink represents and warrants (i) that it has complied, and shall comply, with all Applicable Laws relating to the collection and/or use of the Human Materials and (ii) that it has obtained, and shall obtain, all necessary approvals and appropriate informed consents, in writing, for the collection and/or use of such Human Materials. NewLink shall provide documentation of such approvals and consents upon Merck’s request. NewLink further represents and warrants that such Human Materials may be used as contemplated in this Agreement without any obligations to the individuals or entities (“**Providers**”) who contributed the Human Materials, including any obligations of compensation to such Providers or any other Third Party for the intellectual property associated with, or commercial use of, the Human Materials for any purpose.

**2.3.3 Use of Third Party Intellectual Property.** In performing activities under the Transition Program (or activities under the NewLink Funding Agreements), [\*\*] shall not (i) incorporate any Know-How or other intellectual property owned by any Third Party into any Compound, Product or other Program Know-How or (ii) otherwise use any Know-How or other intellectual property owned by any Third Party in the performance of the Transition Program (or activities under the NewLink Funding Agreements). Notwithstanding the foregoing, [\*\*] shall be allowed to [\*\*] under the [\*\*] to perform the Transition Program.

**2.3.4 Clinical Trial-related Adverse Events.** With respect to Clinical Trials being carried out by or on behalf of a Party for the Current Product during the Transition Period, serious adverse experience reports as defined in 21 CFR 312.32 must be forwarded to the other Party within [\*\*] after receipt of the information. In addition, each Party shall furnish to the other Party copies of the end of study summary of adverse experiences in English as promptly as possible following completion of such Clinical Trial (or earlier, as reasonably requested by such other Party). Within [\*\*] after the Effective Date, NewLink and Merck (or its Affiliate) shall enter into a pharmacovigilance agreement in order to share safety

information and satisfy related requirements of Regulatory Authorities and Applicable Law with respect to Compounds and Products.

**2.4 Use of Third Parties.** Each Party shall be entitled to utilize the services of Third Parties to perform its activities hereunder; provided that [\*\*] that are identified in [\*\*] or [\*\*] expand the scope of activities being performed [\*\*]. Notwithstanding the foregoing, each Party shall remain at all times responsible for the performance of its responsibilities under this Agreement, and shall ensure compliance with the applicable terms of this Agreement by any such Third Party, including (a) that such Third Party's employees involved in performing activities hereunder shall comply with the confidentiality provisions of this Agreement, (b) that such Third Party (including the employees of such Third Party) shall be obligated to assign any rights they may have in any Know-How and Patent Rights resulting from such activities in accordance with Section 7.2, and (c) that such Third Party shall comply with the terms of this Agreement applicable to the subcontracted activities, including Sections 2.3, 2.5 and 2.10. In addition, each Party hereby certifies that it has not retained or otherwise used in any capacity a Third Party, and will not retain or otherwise use in any capacity, the services of any Third Party suspended, proposed for debarment or debarred under United States law, including 21 USC 335a, or any foreign equivalent thereof, in performing any portion of the activities under this Agreement (including activities under the NewLink Funding Agreements). Each Party shall notify the other in writing immediately if any such suspension, proposed debarment or debarment occurs or comes to its attention, and shall, with respect to any Third Party or entity so suspended, proposed for debarment or debarred promptly remove such Third Party or entity from performing any activities, function or capacity under this Agreement (including activities under the NewLink Funding Agreements). Each Party shall oversee the performance by any such Third Parties it utilizes, and shall remain responsible for the performance of such activities in accordance with this Agreement (including activities under the NewLink Funding Agreements). Each Party hereby expressly waives any requirement that the other Party exhaust any right, power or remedy, or proceed against any subcontractor for any obligation or performance hereunder, prior to proceeding directly against the Party engaging the subcontractor.

## **2.5 Compliance with Ethical Business Practices.**

**2.5.1 Compliance with Corporate Policy.** NewLink acknowledges that Merck's corporate policies require that business must be conducted within the letter and spirit of the law. By signing this Agreement, each Party agrees to conduct the activities contemplated herein (including activities contemplated under the

NewLink Funding Agreements) in a manner which is consistent with both law and good business ethics.

2.5.2 **Governments and International Public Organizations.** Without limitation of the foregoing, each Party warrants that none of its employees, agents, officers or other members of its management are officials, officers, agents, representatives of any government or international public organization. Each Party agrees that it shall not make any payment, either directly or indirectly, of money or other assets, including to the compensation derived from this Agreement (hereinafter collectively referred as a “**Payment**”), to government or political party officials, officials of international public organizations, candidates for public office, or representatives of other businesses or persons acting on behalf of any of the foregoing (hereinafter collectively referred as “**Officials**”) where such Payment would constitute a violation of any law. In addition, regardless of legality, a Party shall make no Payment either directly or indirectly to Officials if such Payment is for the purpose of influencing decisions or actions with respect to the subject matter of this Agreement or any other aspect of the other Party’s businesses.

2.5.3 **No Authority.** Each Party acknowledges that no employee of the other Party or its Affiliates shall have authority to give any direction, either written or oral, relating to the making of any commitment by such Party or its agents to any Third Party in violation of terms of this or any other provisions of this Agreement.

2.5.4 **Exclusions Lists.** Each Party certifies to the other that as of the Effective Date it has screened itself, and its officers and directors, against the Exclusions Lists and that it has informed such other Party whether it, or any of its officers or directors has been in Violation. After the execution of this Agreement, each Party shall notify the other in writing immediately if any Violation occurs or comes to its attention, and shall, with respect to any person or entity in Violation, promptly remove such person or entity from performing any Transition Program activities, function or capacity related to the Transition Program or otherwise related to activities under this Agreement (including activities under the NewLink Funding Agreements).

2.6 **Joint Steering Committee.** The Parties will establish a joint steering committee (the “**Joint Steering Committee**” or “**JSC**”) to generally oversee the Transition Program, and to oversee [\*\*].

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

2.6.1 **Composition of the JSC.** As soon as practicable, but in no event more than [\*\*] after the Effective Date, the Parties will establish the JSC, which will be comprised of an equal number of representatives of each Party, with three (3) representatives of NewLink (who shall be employees of NewLink) and three (3) representatives of Merck (who shall be employees of Merck or its Affiliate); provided, however, that the Parties may agree to increase or decrease the number of equal representatives from each Party. These representatives shall have appropriate technical credentials, experience and knowledge, and ongoing familiarity with the Parties' activities and interactions hereunder. Each Party may replace its representative(s) at any time upon prior notice to the other Party. The JSC will meet in person or by teleconference at least [\*\*] per [\*\*] at a mutually acceptable date and location; provided, however, that it is the intent of the Parties that the JSC shall have more frequent and regular interaction [\*\*] in order to facilitate the Transition Program. Each Party may, if approved by the other Party (such approval not to be unreasonably withheld), from time to time invite a reasonable number of participants, in addition to its representatives, to attend the JSC meetings in a non-voting capacity; provided that if either Party intends to have any Third Party (including any consultant) attend such a meeting, such Party shall provide prior written notice to the other Party and shall ensure that such Third Party is bound by confidentiality and non-use obligations consistent with the terms of this Agreement. The JSC will be chaired by a Merck representative. The role of the chairperson shall be to preside in person or telephonically at meetings of the JSC, to prepare and circulate agendas and to ensure the preparation of minutes. The chairperson of the JSC will be responsible for preparing reasonably detailed written minutes of all JSC meetings that reflect, without limitation, material decisions made at such meetings. The JSC chairperson shall send draft meeting minutes to each member of the JSC for review and approval reasonably promptly after each JSC meeting. Such minutes will be deemed approved unless one or more of the members of the JSC objects to the accuracy of such minutes within [\*\*] of receipt. Each Party shall bear its own expenses related to the attendance of such meetings by its representative(s).

2.6.2 **Responsibilities.** The JSC shall:

- (a) Review, oversee and direct the efforts, progress and status of the Transition Program (including technology transfer, if any), including reviewing and directing the conduct of the Transition Program;

- (b) Review, oversee and direct the efforts, progress and status of [\*\*];
- (c) Review and approve amendments to the Transition Plan from time to time;
- (d) Review [\*\*] issues that arise in connection with [\*\*], during the [\*\*];
- (e) Oversee and make decisions with respect to matters related to [\*\*] in connection with Compound and Product; and
- (f) Address such other matters relating to the activities under this Agreement designated to be addressed by the JSC under this Agreement or as either Party may otherwise bring before the JSC.

2.6.3 **Subcommittees.** The JSC shall have the right to form subcommittees as determined by the JSC in order to address any particular matters within the authority of the JSC. For clarity, any such subcommittee shall have no broader rights and no broader authority than the JSC, and shall only exercise those rights and authorities as designated to such subcommittee by the JSC. Any such subcommittee shall have no decision making authority, but shall make recommendations to the JSC for the JSC's review and approval.

2.6.4 **Disbandment of JSC.** The JSC shall be automatically disbanded (without any further actions by either Party) and shall have no further authority with respect to the activities hereunder, upon the end of the Transition Period. Thereafter, the JSC shall have no further obligations under this Agreement and the Project Leaders shall be the contact persons for the exchange of information under this Agreement.

2.6.5 **Development Forums.** During the [\*\*] period following the disbanding of the JSC in accordance with Section 2.6.4, the Parties shall meet in person or by teleconference no less than [\*\*] to discuss Merck's Development of Products, including Products other than the Current Product (the "**Development Forum**"). At each such meeting, Merck will provide NewLink with an update on the status of the Development of the Products, and Merck's ongoing plan for the Development of Products (provided that, for clarity, such plan shall be non-binding and for informational purposes only). In addition, during such period, Merck will promptly notify NewLink if Merck suspends or otherwise terminates the Development or Commercialization of any Compound or Product.

## 2.7 Scope of Committee Oversight and Decision-Making Authority.

2.7.1 **Scope of Committee Oversight.** The JSC shall not have the right to: (i) modify or amend the terms and conditions of this Agreement; (ii) waive either Party's compliance with the terms and conditions of this Agreement; (iii) determine any issue in a manner that would conflict with the express terms and conditions of this Agreement or (iv) following agreement with respect to the initial Transition Plan, amend the Transition Plan in a manner that would [\*\*], unless such amendment is mutually agreed to by the Parties in writing; provided that, for the avoidance of doubt, if the work proposed in the amendment to the Transition Plan [\*\*] or otherwise [\*\*], then [\*\*] such work and the [\*\*].

2.7.2 **Decision-Making Authority.** The goal of all decision-making of the JSC shall be to achieve consensus. All decisions of the JSC with respect to matters over which it has decision-making authority shall be made by unanimous vote of the applicable committee's representatives, with each Party collectively having one (1) vote. However, in the event that the JSC is unable to reach consensus within [\*\*] of the matter first being referred to the JSC, then [\*\*], subject to [\*\*], unless such matter is one of the following matters (each, a "**Critical Issue**"): (i) [\*\*]; or (ii) [\*\*]. If the Parties cannot agree on any Critical Issue, then the status quo of such matter shall continue; provided, however, with respect to a Critical Issue in (i) above, [\*\*]. Any decision made by [\*\*] must be consistent with the terms of this Agreement and within the scope of authority delegated to the JSC under this Agreement.

2.8 **Project Leads and Alliance Managers.** Merck and NewLink each shall appoint an employee of such Party (or its Affiliate, as applicable) as its project leader (the "**Project Leader**") who shall be the primary contact between the Parties with respect to the Transition Program and who shall coordinate each Party's role in the Transition Program. Each Party shall notify the other within [\*\*] of the Effective Date of the appointment of its Project Leader and shall notify the other Party as soon as practicable upon changing this appointment. In addition, each Party may also appoint, at its discretion, an alliance manager to facilitate communications between the Parties hereunder (the "**Alliance Manager**"). If a Party appoints an Alliance Manager, such Party shall notify the other of the appointment of its Alliance Manager and shall notify the other Party as soon as practicable upon changing this appointment.

## 2.9 Exchange of Information and Materials.

2.9.1 **General.** As soon as reasonably practicable following Effective Date (but in all cases within [\*\*] after the Effective Date or such other period of time as agreed to by the Parties), NewLink shall disclose to Merck in English (in writing and in an electronic format) all NewLink Know-How. Thereafter on an ongoing basis during the Term upon the reasonable request of Merck, NewLink shall cooperate with Merck and promptly disclose to Merck in English (and deliver in writing and in an electronic format) (i) any other NewLink Know-How (including any Program Know-How) relating to Compound or Product (or the Development, Manufacture, use or Commercialization thereof) as may be developed or identified by or on behalf of NewLink (or its Affiliates), and (ii) from the Effective Date until [\*\*], any other materials and documentation (including [\*\*]) in NewLink's (or its Affiliate's or subcontractor's) possession or Control as may be reasonably requested by Merck from time to time that relate to Compounds or Products and are to be used by or on behalf of Merck in the performance of its activities under this Agreement, including [\*\*]. Without limiting the generality of the foregoing, [\*\*], NewLink shall [\*\*] to provide [\*\*] pursuant to, and in accordance with, [\*\*].

2.9.2 **Technology Transfer; Transition of Activities.** As soon as reasonably practicable following the Effective Date (but in all cases within [\*\*] or such other period of time as agreed to by the Parties), NewLink shall (i) transfer to Merck (or its designee) all materials (other than Inventory) related to Compound or Product in NewLink's (or any of its Affiliate's or contractor's) possession or Control, including [\*\*], and (ii) transfer and assign to Merck (or its designee), and NewLink hereby does transfer and assign to Merck, all Regulatory Documentation (other than the Existing IND) related to Compound or Product (including the transfer to Merck of a database that contains all relevant information regarding adverse events that have been observed during any clinical trials or studies with respect to Compound or Product prior to the Effective Date). In addition, upon Merck's request, NewLink shall transfer and assign to Merck (or its designee) [\*\*] (the "**Existing IND**"). NewLink shall assist Merck, and each Party shall reasonably cooperate, to ensure [\*\*], including providing [\*\*] in connection therewith. As used herein, the term "**Regulatory Documentation**" means all applications, registrations, licenses, authorizations and approvals (including all Marketing Authorizations), all correspondence submitted to or received from Regulatory Authorities (including [\*\*]) and all supporting

documents in connection therewith, and all reports and documentation in connection with clinical studies and tests (including [\*\*]), and [\*\*] in any of the foregoing, including all INDs, BLAs, [\*\*], in each case related to a Compound and/or Product.

### 2.9.3 **Inventory Transfer and Manufacturing Technology Transfer.**

- (a) **Inventory Transfer.** At the request of Merck from time to time as set forth in the Transition Plan, NewLink shall promptly transfer title to Merck and deliver to Merck (or its designee) (at a location to be [\*\*]), [\*\*] any or all (as and to the extent [\*\*]) inventory of Compound and Product (including [\*\*]) held by or on behalf of NewLink or any of its Affiliates (including any such inventory [\*\*]) (the “**Inventory**”).
- (b) **Manufacturing Technology Transfer.** Without limiting the provisions of Sections 2.9.1 and 2.9.2, as soon as reasonably practicable following the Effective Date (but in all cases within [\*\*] after the Effective Date or such other period of time as agreed to by the Parties), NewLink shall transfer or cause to be transferred (including from its Third Party contract manufacturers) to Merck or its Affiliate (or a Third Party manufacturer designated by Merck), copies in English (in writing and in an electronic format) of all [\*\*] that is related to the manufacture of the Compounds and/or Products, in order to enable Merck (or its designee) to manufacture the Compounds and Products, including [\*\*] to manufacture Compounds and Products, including [\*\*]. In addition, at the request of Merck from time to time, NewLink shall make its (and its Affiliates’) employees and consultants (including personnel of its Third Party contract manufacturers) available to Merck to provide reasonable consultation and technical assistance in order to ensure an orderly transition of the manufacturing technology and operations to Merck (or its designee) and to assist Merck (or its designee) in the start-up of its manufacture of Compound and Product (such consultation, the “**Manufacturing Consultation**”). For clarity, the Manufacturing Consultation shall be [\*\*].

2.9.4 **Assignment of Certain Existing Agreements.** At the written request of Merck, NewLink shall, to the extent legally permissible (and, to the extent consent is required from the relevant counterparty, [\*\*]), (i) assign to Merck (or its Affiliate) any or all (as designated by Merck) of [\*\*] and/or (ii) assist Merck (or its Affiliate) in [\*\*] to cover the subject matter of such [\*\*], as applicable, in each case of (i) and/or (ii), [\*\*]; provided that NewLink shall not be obligated to assign any such [\*\*] if such [\*\*] is [\*\*]. In the event that any [\*\*] is assigned to Merck, NewLink shall [\*\*], or related to, any such [\*\*] as a result of, or in connection

with, [\*\*] of such [\*\*], but which [\*\*]. In the event that a given [\*\*] is assigned to Merck in accordance with this Section 2.9.4, then such [\*\*] shall [\*\*].

2.9.5 **Transition and Transition Plan; Ongoing Assistance.** Without limiting the foregoing provisions of this Section 2.9, NewLink shall perform the activities to be performed by NewLink as set forth in the Transition Plan (including technology transfer). NewLink shall, during the period from the Effective Date [\*\*], perform such other reasonable activities and provide such other reasonable assistance as Merck may reasonably request from time to time, in order to transition the Development, Manufacturing and Commercialization of Compound and Product to Merck and [\*\*] Develop, Manufacture and Commercialize Compound and Product, including [\*\*]; provided, that if Merck requests any such assistance after the end of the Transition Period, the Parties will agree on the scope and plan for such activities (including a plan for addressing the costs and expenses of such activities) prior to NewLink's performance thereof, [\*\*].

2.9.6 **Data From Third Party Studies.** To the extent that any Development activities (including clinical trials) are being conducted by, or sponsored by, a Third Party (including [\*\*]) with respect to Compound or Product, [\*\*] to obtain [\*\*], and to [\*\*], including the [\*\*].

2.9.7 [\*\*]. The Parties agree and acknowledge that, except as expressly set forth in Section 2.9.5, the activities set forth in this Section 2.9, and any other activities [\*\*], shall be [\*\*].

## 2.10 Records and Reports.

2.10.1 **Records.** Each Party shall maintain records, in sufficient detail and in good scientific manner appropriate for patent and regulatory purposes, which shall fully and properly reflect all work done and results achieved in the performance of the Transition Program or other activities under this Agreement (including activities under the NewLink Funding Agreements).

2.10.2 **Copies and Inspection of Records; Reports.** Merck shall have the right, during normal business hours and upon reasonable notice, to inspect and copy all such records of NewLink referred to in Section 2.10.1. Merck shall maintain such records and the information disclosed therein in confidence in accordance with Section 4.1. Merck shall have the right to arrange for its employee(s) and/or consultant(s) involved in the activities contemplated hereunder to visit the offices

and laboratories of NewLink and any of its Third Party contractors as permitted under Section 2.4 during normal business hours and upon reasonable notice, and to discuss work performed for the Transition Program [\*\*] with the technical personnel and consultant(s) of NewLink. Upon the reasonable request of Merck, NewLink shall provide copies of such NewLink records described in Section 2.10.1.

2.10.3 **[\*\*] Reports.** Within [\*\*] following the end of each [\*\*], NewLink shall provide to Merck a written progress report in English which shall summarize the work performed to date on the Transition Program [\*\*] in relation to the [\*\*] of the [\*\*] and provide [\*\*] by the [\*\*] relating to the progress of the goals or performance of the Transition Program [\*\*] under the [\*\*]. NewLink shall use Commercially Reasonable Efforts to [\*\*]. For clarity, all such reports shall be considered the Confidential Information [\*\*].

2.10.4 **Data Integrity.** Each Party acknowledges the importance of ensuring that the Transition Program (and the activities under the NewLink Funding Agreements) is undertaken in accordance with the following good data management practices: (i) data is being generated using sound scientific techniques and processes; (ii) data is being accurately and reasonably contemporaneously recorded in accordance with good scientific practices by Persons conducting research hereunder; (iii) data is being analyzed appropriately without bias in accordance with good scientific practices; and (iv) all data and results are being stored securely and can be easily retrieved. Each Party agrees that it shall carry out the Transition Program (and activities under the NewLink Funding Agreements) so as to collect and record any data generated therefrom in a manner consistent with the foregoing requirements.

2.11 **Transition Program Costs.** [\*\*] costs in connection with performing Transition Program activities.

## ARTICLE 3 LICENSE, DEVELOPMENT, MANUFACTURING AND COMMERCIALIZATION

### 3.1 License Grants by NewLink.

3.1.1 **NewLink Patent Rights and NewLink Know-How.** Subject to the terms and conditions of Section 3.1.3, NewLink hereby grants to Merck an exclusive (even as to NewLink and its Affiliates), royalty-bearing license in the Territory under

the NewLink Patent Rights and NewLink Know-How, with a right to grant and authorize sublicenses (subject to the restriction set forth below) through multiple tiers, to research, develop, make, have made, use, offer to sell, sell, import, export and/or otherwise exploit Compounds and Products in the Field. Merck may grant sublicenses of the rights granted to it under this Section 3.1.1 [\*\*]; provided, however, that (a) promptly following the execution of any such sublicense for Commercialization rights with a Third Party, Merck shall [\*\*], and (b) Merck shall be responsible for ensuring that the performance by any of its sublicensees hereunder that are exercising rights under a sublicense hereunder is in accordance with the applicable terms of this Agreement, and the grant of any such sublicense shall not relieve Merck of its obligations under this Agreement (except to the extent they are performed by any such sublicensee(s) in accordance with this Agreement).

3.1.2 **NewLink Retained Rights**. Notwithstanding the scope of the exclusive license granted to Merck under Section 3.1.1, subject to the terms and conditions of this Agreement, NewLink shall retain rights under the NewLink Patent Rights and the NewLink Know-How for the sole purpose of performing NewLink's obligations under the Transition Program in accordance with this Agreement and the Transition Plan and to perform activities expressly set forth in the NewLink Funding Agreements in accordance with this Agreement (including Section 3.10). NewLink shall [\*\*].

3.1.3 **NewLink Canada License**. Notwithstanding anything to the contrary herein, all licenses or other grants granted by NewLink to Merck hereunder with respect to any NewLink Know-How or NewLink Patent Rights that are owned by Public Health Canada and licensed to NewLink under the NewLink Canada License shall at all times be subject to the terms and conditions of the NewLink Canada License. It is the intent of the Parties that [\*\*], and as such, each Party hereby covenants that it shall [\*\*] and shall [\*\*] to include in [\*\*] (provided that, [\*\*] may also [\*\*] that are not [\*\*], which [\*\*] and the Parties [\*\*]), and [\*\*]. NewLink shall [\*\*], it being understood that [\*\*] this sentence to the extent [\*\*] is [\*\*] or the [\*\*]; provided that [\*\*].

3.2 **Non-Exclusive License Grant to Merck**. In the event that the research, development, making, having made, use, offer for sale, sale, import and/or other exploitation by Merck, or Merck's Related Parties, of Compound(s) or Product(s) would infringe a claim of an issued letters patent which NewLink (or its Affiliate) Controls and which patents are not

covered by the grant in Section 3.1 (an “**Additional NewLink Patent**”), Merck or NewLink, as applicable, shall so notify the other Party thereof. Thereafter, (i) the Parties will [\*\*] and (ii) such Additional NewLink Patent [\*\*]. Notwithstanding the foregoing, if Merck notifies NewLink in writing that [\*\*] shall [\*\*] included in the [\*\*] and shall [\*\*]. Notwithstanding the foregoing, if the exercise by Merck of the license under Section 3.1 with respect to any Additional NewLink Patent would [\*\*], such patent shall [\*\*] for such [\*\*] were notified by [\*\*] at the time the Additional NewLink Patent [\*\*]; provided, however, that [\*\*] to [\*\*] the [\*\*].

**3.3 Non-Exclusive License Grants to NewLink.** If NewLink’s performance of activities under the Transition Program requires a license under any Merck Patent Rights or under any Merck Know-How, as applicable, Merck shall grant and hereby grants to NewLink, a non-exclusive, non-transferable, non-sublicensable, royalty-free license under such Merck Patent Rights and/or Merck Know-How, as applicable, solely to perform such activities under the Transition Program in accordance with this Agreement. For clarity, the foregoing licenses set forth in this Section 3.3 shall not limit in any way the exclusive licenses granted to Merck under Section 3.1.

**3.4 No Grant of Inconsistent Rights by NewLink.** NewLink (and its Affiliates) shall not assign, transfer, convey or otherwise grant to any Person or otherwise encumber (including through lien, charge, security interest, mortgage, encumbrance or otherwise) (i) any rights to any NewLink Know-How or NewLink Patent Rights (or any rights to any intellectual property that would otherwise be included in the NewLink Know-How or NewLink Patent Rights), in any manner that is inconsistent with or would interfere with the grant of the rights or licenses to Merck hereunder, or (ii) any rights to any Compounds or Products (provided that NewLink shall grant to Merck the rights to the Compounds and Products as set forth herein). Without limiting the foregoing, [\*\*] any Compounds or Products [\*\*], except for [\*\*] to be [\*\*] as set forth in the [\*\*] shall not [\*\*] to any Third Parties [\*\*].

### **3.5 Development, Manufacturing and Commercialization.**

**3.5.1 General.** Merck (and its Affiliates), either itself or with or through Third Party(ies), shall have the sole right to (and shall control all aspects of) Develop and Commercialize Compounds and Products in accordance with the terms of this Agreement, and for clarity, [\*\*] NewLink [\*\*] to be [\*\*] under the Transition Program in accordance with this Agreement and [\*\*] expressly set forth in the [\*\*]. With respect to the Current Product, Merck (and its Affiliates), either itself

or with or through Third Party(ies), shall use Commercially Reasonable Efforts to Develop and, following receipt of all applicable Marketing Authorizations (if achieved), to Commercialize the Current Product (the “**Current Product Commercially Reasonable Efforts Obligation**”), and [\*\*] Merck (and its Affiliates), either itself or with or through Third Party(ies), shall [\*\*] use Commercially Reasonable Efforts [\*\*], and, together with the Current Product Commercially Reasonable Efforts Obligation, the “**Product Diligence Obligations**”). [\*\*] efforts and decisions with respect to the Compounds and Products [\*\*]. Merck (and its Affiliates), either itself or with or through Third Party(ies), shall have the sole right to (and shall control all aspects of) Manufacture Compound and Product, and [\*\*] NewLink [\*\*] to be [\*\*] under the Transition Program in accordance with this Agreement and [\*\*] expressly set forth in the [\*\*].

3.5.2 **Booking of Sales; other Commercialization.** Without limiting the generality of the provisions of Section 3.5.1, Merck (and its Affiliates), either itself or with or through Third Party(ies), shall have the sole right to, and shall control all aspects of, (i) handling all returns, recalls, order processing, invoicing and collection, distribution, inventory and receivables arising from sales to Third Parties, in each case, with respect to Product, (ii) booking of sales of Product, and (iii) establishing and modifying the terms and conditions with respect to the sale of the Product, including any terms and conditions relating to the price (including discounts) at which the Product will be sold.

3.6 **Progress Updates.** At the written request of NewLink (but no more than [\*\*]), Merck will provide to NewLink an update on the progress of its Development activities related to Product.

3.7 **Regulatory Matters.** In the event that Merck determines that any regulatory filings for any Compounds or Products are required for any activities hereunder (including any activities under the Transition Program), including INDs, BLAs and other Marketing Authorizations (as applicable), then as between the Parties, Merck (or its Affiliate or Related Party or other designee) shall have the sole right, in its discretion, to obtain such regulatory filings (in its (or its Affiliate’s or its Related Party’s or other designee’s) name) and as between the Parties, Merck (or its Affiliate or its Related Party or other designee) shall be the owner of all such regulatory filings. As between the Parties, Merck (or its Affiliate or Related Party or other designee) shall have the sole right to communicate and otherwise interact with Regulatory Authorities with respect to the

Compounds and/or Products, including with respect to any INDs, BLAs and other Marketing Authorizations in connection therewith. NewLink (and its Affiliates) shall have no right to, and shall not, make any regulatory filings related to any Compounds or Products or otherwise interact with any Regulatory Authorities with respect to the Compounds or Products; provided that [\*\*] expressly set forth in the NewLink Funding Agreements in accordance with this Agreement [\*\*] and [\*\*], NewLink shall [\*\*]; provided that, in connection with [\*\*], as applicable, NewLink shall [\*\*] with respect thereto (including [\*\*]) and, to the extent not inconsistent with Applicable Law or [\*\*], NewLink shall [\*\*] in connection therewith (and in connection therewith, NewLink [\*\*]). At the request of Merck, NewLink shall use Commercially Reasonable Efforts to assist Merck in communicating with, filing with, or responding to questions of Regulatory Authorities.

**3.8 Excused Performance.** The obligation of Merck with respect to any Product under Section 3.5 is [\*\*] of the [\*\*], and the obligation of Merck to develop or commercialize any such Product [\*\*].

**3.9 No Implied Licenses.** Except as specifically set forth in this Agreement, neither Party shall acquire any license or other intellectual property interest, by implication or otherwise, in any Confidential Information disclosed to it under this Agreement or under any patents or patent applications owned or Controlled by the other Party or its Affiliates.

**3.10 Third Party Funding.**

**3.10.1 Government Funding Opportunities.** Each Party shall [\*\*] for the Development, Manufacturing or Commercialization of Product of which it becomes aware during the Transition Period. The Parties will in good faith discuss each such opportunity and determine which Party has the capabilities and resources to obtain such funding. Unless otherwise agreed by the Parties, Merck shall be given the opportunity (but Merck shall not be obligated) to pursue such funding opportunity (and NewLink shall not pursue any such funding opportunity unless approved by Merck in writing) and NewLink shall not be obligated to pursue any funding opportunity (except as expressly set forth in the following proviso) unless it agrees otherwise; provided that, notwithstanding the foregoing, but subject to Section 3.11, NewLink [\*\*] (the [\*\*], the “**NewLink Future Funding Agreements**” and together with the NewLink Existing Funding Agreements, the “**NewLink Funding Agreements**”). Subject to Section 3.10.2, [\*\*] under this Section 3.10.1 shall [\*\*] with which it [\*\*].

- 3.10.2 **NewLink Agreements.** NewLink shall be responsible for, and shall control all aspects of, the administration of the NewLink Funding Agreements; provided that [\*\*] with respect to the [\*\*] and [\*\*] with respect to the [\*\*], including to allow [\*\*] under such [\*\*] that such [\*\*]; provided further, that in no event shall NewLink be required to [\*\*] (provided that, for clarity, if [\*\*] then NewLink shall [\*\*]), or [\*\*] obligations under the NewLink Funding Agreements. In addition, the Parties agree that [\*\*] under a NewLink Funding Agreement (and in such case, [\*\*] to comply with [\*\*]); provided, however, that in the event that either (x) [\*\*] to provide [\*\*], (y) [\*\*], or (z) [\*\*] under the applicable [\*\*] then, in each case, the Parties [\*\*] with respect to, and shall [\*\*] with any [\*\*]. In connection with any [\*\*], NewLink shall [\*\*]; provided that NewLink shall [\*\*] to the extent any [\*\*]. To the extent that [\*\*] that would be [\*\*], NewLink shall [\*\*] to Merck [\*\*], unless the Parties otherwise agree that [\*\*] pursuant to [\*\*], in which case NewLink shall [\*\*].
- 3.10.3 **Activities and Materials under NewLink Funding Agreements.** NewLink shall be responsible for compliance with the terms of the NewLink Funding Agreements; provided that Merck shall have the rights as set forth in Section 3.10.2. Promptly (and no later than [\*\*] with respect to any material Know-How or other materials and [\*\*] with respect to all other Know-How and materials) after the creation or generation of any Know-How or other materials under any NewLink Funding Agreement, NewLink [\*\*]. NewLink shall ensure ([\*\*]) that Merck has the rights to use, and hereby grants to Merck and its Related Parties the rights to use, such Know-How and materials in accordance with the exercise of the license set forth in Section 3.1 (and for clarity, such Know-How and materials shall be included in the licenses granted under Section 3.1); provided that, to the extent that NewLink [\*\*] in and to any [\*\*], NewLink shall, [\*\*] (the “[\*\*]”) (and in such case, such [\*\*] shall not be included in the licenses granted under Section 3.1); provided further that, Merck (and its Related Parties) shall only [\*\*] in connection with the Compounds and Products.
- 3.10.4 **Merck Agreements.** Merck will use Commercially Reasonable Efforts to establish [\*\*] by the end of the Transition Period. Following the expiration of the Transition Period (or prior to the expiration of the Transition Period, if agreed to by the Parties), at the written request of Merck, NewLink shall [\*\*], and in connection therewith, NewLink shall [\*\*] Merck (or its Affiliate), including [\*\*]; provided that (i) NewLink shall not [\*\*] to the extent any [\*\*] to provide [\*\*] and (ii) NewLink shall not [\*\*] provide any [\*\*] unless such [\*\*].

3.11 **Additional NewLink Third Party Agreements.** NewLink shall [\*\*] after the Effective Date [\*\*] not to be [\*\*]. In connection therewith, (i) NewLink shall [\*\*] and (iii) [\*\*] of any such [\*\*].

#### ARTICLE 4 CONFIDENTIALITY AND PUBLICATION

4.1 **Non-Disclosure and Non-Use Obligation.** All Confidential Information disclosed by one Party to the other Party or its Affiliate hereunder shall be maintained in confidence by the receiving Party and shall not be disclosed to any Third Party or used for any purpose except as set forth herein, without the prior written consent of the disclosing Party, except to the extent that such Confidential Information:

- (a) is known by the receiving Party at the time of its receipt, and not through a prior disclosure by the disclosing Party, as documented by the receiving Party's business records;
- (b) is in the public domain by use and/or publication before its receipt from the disclosing Party, or thereafter enters the public domain through no fault of the receiving Party;
- (c) is subsequently disclosed to the receiving Party by a Third Party who may lawfully do so and is not under an obligation of confidentiality to the disclosing Party; or
- (d) is independently developed by the receiving Party without access to or reference to Confidential Information received from the disclosing Party, as documented by the receiving Party's business records contemporaneous with such development.

Any combination of features or disclosures shall not be deemed to fall within the foregoing exclusions merely because individual features are published or available to the general public or in the rightful possession of the receiving Party unless the combination itself and principle of operation are published or available to the general public or in the rightful possession of the receiving Party.

4.2 **Permitted Disclosures.** Notwithstanding Section 4.1, a receiving Party shall be permitted to disclose Confidential Information of the disclosing Party, if such Confidential Information:

- (a) is disclosed to governmental or other regulatory agencies in order to obtain patents or to gain or maintain approval to conduct clinical trials or to market Product under this Agreement, in each case, in accordance with this Agreement, but such disclosure may be only to the extent reasonably necessary to obtain patents or authorizations, and provided

that reasonable steps are taken to ensure confidential treatment of such Confidential Information (if available);

- (b) is disclosed by the receiving Party (or its Affiliates) to Related Parties, agent(s), consultant(s), and/or other Third Parties for any and all purposes the receiving Party or its Affiliates deem necessary or advisable in the course of conducting activities in accordance with this Agreement (including the exercise of licenses granted to the receiving Party hereunder, and/or, in the case of Merck (or its Affiliates), engaging in transactions with potential Third Party collaborators, service providers and/or other transferees of rights and/or obligations hereunder) on the condition that such Third Parties agree to be bound by confidentiality and non-use obligations that substantially are no less stringent than those confidentiality and non-use provisions contained in this Agreement; provided, that, with respect to Confidential Information received by NewLink from Public Health Canada, the foregoing shall at all times be subject to terms of confidentiality and non-use provisions of the NewLink Canada License;
- (c) is deemed necessary by counsel to the receiving Party to be disclosed to such Party's attorneys, independent accountants or financial advisors for the sole purpose of enabling such attorneys, independent accountants or financial advisors to provide advice to the receiving Party, on the condition that such attorneys, independent accountants and financial advisors agree to be bound by confidentiality and non-use obligations that substantially are no less stringent than those confidentiality and non-use provisions contained in this Agreement;
- (d) is deemed necessary by the receiving Party to be disclosed in connection with a potential or actual financing, merger or acquisition of the receiving Party (or its Affiliate), in which case such Party shall have the further right to disclose Confidential Information to Third Parties involved in such financing, merger or acquisition, provided that such Third Parties agree to be bound by confidentiality and non-use obligations that substantially are no less stringent than those confidentiality and non-use provisions contained in this Agreement; or
- (e) is required by the terms of the NewLink Canada License to be disclosed to Public Health Canada to satisfy NewLink's or Merck's, as applicable, obligations to report any required information, on the condition that, Public Health Canada be bound by terms of confidentiality and non-use provisions with respect to such information, as specified in the NewLink Canada License.

In addition, if a Party is required by judicial or administrative process or Applicable Law to disclose Confidential Information of the other Party that is subject to the non-disclosure provisions of Section 4.1, such Party shall promptly inform the other Party of the disclosure that is being sought in order to provide the other Party an opportunity to challenge or limit the disclosure obligations. Confidential Information that is disclosed by judicial or administrative process or as required by Applicable Law shall remain otherwise subject to the confidentiality and non-use provisions of Section 4.1, and the Party disclosing Confidential Information pursuant to law or court order or as required by Applicable Law shall take all steps reasonably necessary, including without limitation obtaining an order of confidentiality, to ensure the continued confidential treatment of such Confidential Information.

**4.3 Know-How; Joint Know-How.** Without limiting the provisions of Section 4.1, with respect to any [\*\*], subject to Section 4.1.

**4.4 Ownership of Confidential Information.** For the purposes of this Article 4, where pursuant to the terms of this Agreement one Party owns Confidential Information that has been generated by the other Party, then such Confidential Information shall be treated as if it had been generated by such owning Party and disclosed by such owning Party to such other Party.

**4.5 Terms of Agreement.** Neither Party nor its Affiliates shall disclose any terms or conditions of this Agreement to any Third Party without the prior consent of the other Party, except as follows: A Party and its Affiliates may disclose the terms or conditions of this Agreement (but not any other Confidential Information, which may be disclosed only as described elsewhere in this Article 4), (a) on a need-to-know basis to its legal and financial advisors to the extent such disclosure is reasonably necessary; provided that such advisors are either under professional codes of conduct giving rise to expectations of confidentiality and non-use or are bound by written agreements providing for confidentiality and non-use obligations, in each case, that are no less stringent than those confidentiality and non-use provisions contained in this Agreement; (b) to a Third Party in connection with a potential or actual (i) merger, consolidation or similar transaction by such Party or its Affiliates, (ii) sale of all or substantially all of the assets of such Party or its Affiliates (or, with respect to Merck, sale of all or substantially all of the assets of Merck to which this Agreement relates) or (iii) financing; provided that, in each case, the disclosing Party shall ensure that such Third Party is bound by confidentiality and non-use obligations with respect to Confidential Information of the other Party no less restrictive than those contained in this Agreement and such disclosing Party shall be fully liable to the other Party for breach of the confidentiality and non-use obligations under

this Agreement by such Third Parties; (c) to the United States Securities and Exchange Commission or any other securities exchange or governmental authority, including as required to make an initial or subsequent public offering; or (d) as otherwise required by Applicable Law; provided that in the case of (c) and (d) the disclosing Party shall (x) submit the proposed disclosure in writing to the other Party as far in advance as reasonably practicable (and in no event less than [\*\*] prior to the anticipated date of disclosure, unless such shorter period is reasonably necessary to comply with Applicable Law) so as to provide a reasonable opportunity to comment on any such required disclosure, (y) if requested by such other Party, seek, or cooperate with such Party's efforts to obtain, confidential treatment or a protective order with respect to any such disclosure to the extent available at such other Party's expense, and (z) use good faith efforts to incorporate the comments of such other Party in any such disclosure or request for confidential treatment or protective order, and if disclosure of the terms of this Agreement is required by Applicable Law or the rules of any securities exchange or market on which a Party's securities are listed or traded, the Parties shall agree on a redacted version of this Agreement to be so disclosed; provided, however, that in the event the Parties cannot agree on such a redacted version of the Agreement, the disclosing Party shall have the right to disclose such terms of this Agreement as such Party's counsel determines is necessary to comply with Applicable Law or the rules of any securities exchange or market on which such Party's securities are listed or traded.

#### 4.6 Publicity/ Use of Names; Press Releases.

4.6.1 **General.** The Parties have mutually agreed on the press release with respect to this Agreement, a copy of which is set forth in Schedule 4.6. Either Party may make subsequent public disclosures that are limited to the specific contents of such press release. Except as otherwise expressly set forth herein, no disclosure of the terms of this Agreement may be made by either Party (or its respective Affiliates), and no Party (or its respective Affiliates) shall use the name, trademark, trade name or logo of the other Party, its Affiliates or their respective employee(s) in any publicity, promotion, news release or disclosure relating to this Agreement or its subject matter, without the prior express written permission of the other Party, except as may be required by Applicable Law, including the rules of any securities exchange or market on which a Party's securities are listed or traded; provided that in the event disclosure is required by Applicable Law, the disclosing Party shall use good-faith efforts to give the non-disclosing Party an opportunity, with reasonable advance notice, as practicable under the circumstances, to review and comment on any proposed disclosure.

4.6.2 **NewLink Publicity.** NewLink shall not issues any other press release or public announcement related to the Transition Program and/or any Compound or Product without the prior written approval of Merck; provided that if (i) such press release or public announcement is required by Applicable Law or (ii) the failure to issue such press release or public announcement would cause NewLink to breach a NewLink Funding Agreement, then NewLink may issue such press release or public announcement; provided that NewLink shall provide a copy thereof to Merck at least [\*\*] prior to the proposed publication thereof (or with as much advance notice as possible under the circumstances if it is not possible to provide at least [\*\*] notice). Merck shall be allowed to review and comment on such proposed publication and NewLink shall reasonably consider any comments provided by Merck with respect thereto in a timely fashion.

4.6.3 **Merck Publicity.** During the Transition Period, Merck may not issue any other press release or public announcement relating to the Transition Program and/or any Compound or Product, without providing NewLink a copy of such proposed press release or public announcement at least [\*\*] prior to the proposed publication thereof (or with as much advance notice as possible under the circumstances if it is not possible to provide at least [\*\*] notice), and in connection therewith, NewLink shall be allowed to review and comment on such proposed publication and Merck shall reasonably consider any comments provided by NewLink with respect thereto in a timely fashion. Following the Transition Period, Merck may issue any press release or public announcement relating to the Transition Program and/or any Compound or Product; provided that, to the extent practicable, Merck shall notify NewLink thereof at least [\*\*] prior to the proposed publication thereof (or with as much advance notice as possible under the circumstances if it is not possible to provide at least [\*\*] notice).

4.7 **Publications.** NewLink shall publish scientific information related to the Compounds or Products (including the results of the Transition Program), only with the prior written consent of Merck; provided that if [\*\*], then NewLink may make such publication; provided that NewLink shall [\*\*] on any [\*\*] and [\*\*]. Merck shall have the right to publish information related to the Compounds and Products (including the results of the Transition Program) [\*\*].

4.8 **Clinical Trial Registration.** Notwithstanding the foregoing, in all cases, Merck shall have the right to register clinical trials and publish the results or summaries of results of

any clinical trials conducted hereunder with respect to Compound or Product on clinicaltrials.gov or other similar registry.

4.9 **Remedies.** Each Party shall be entitled to seek, in addition to any other right or remedy it may have, at law or in equity, a temporary injunction, without the posting of any bond or other security, enjoining or restraining the other Party from any violation or threatened violation of this Article 4.

4.10 **Prior Non-Disclosure Agreements.** As of the Effective Date, the terms of this Article 4 shall supersede (i) the Existing Confidentiality Agreement and (ii) the Tri-Party Confidentiality Agreement (but solely to the extent that the Tri-Party Confidentiality Agreement applies as between Merck on the one hand, and NewLink and NL, on the other hand), and, this Article 4 shall apply to any confidential information disclosed by a Party (or its Affiliate) under either the Existing Confidentiality Agreement or the Tri-Party Confidentiality Agreement, as applicable.

## ARTICLE 5 PAYMENTS AND REPORTS

5.1 **Upfront Payment.** In consideration of the license and other rights granted to Merck herein, Merck shall pay to NewLink, within [\*\*] following the Effective Date, a one-time, non-refundable upfront payment in the amount of Thirty Million Dollars (\$30,000,000).

5.2 **Milestone Payment.** Subject to the terms and conditions of this Agreement, Merck shall pay to NewLink a one-time, non-refundable payment in the amount of Twenty Million Dollars (\$20,000,000) (the “**Milestone Payment**”) within [\*\*] following [\*\*] as [\*\*] (the “**Milestone Event**”).

5.3 **Priority Review Voucher.**

5.3.1 **Current Product Voucher.** If, at any time during the Term, a priority review voucher is issued by the FDA to Merck or a Related Party as the sponsor of a Marketing Authorization application for the Current Product or to NewLink or any of its Affiliates as the sponsor of an IND for the Current Product (the “**Current Product Voucher**”), the receiving Party shall promptly notify the other Party thereof. If Merck or a Related Party receives such Current Product Voucher, then, upon NewLink’s written request within [\*\*] after receipt of the Current Product Voucher, to the extent legally permissible, Merck (or such Related Party, as applicable) shall transfer all of its rights and interest in

connection with the Current Product Voucher to NewLink, and in connection therewith, the Parties shall execute all documents necessary to effect such transfer [\*\*] of such written request (provided that, the Parties may agree on an alternative structure in lieu of such transfer). In all cases (whether the Current Product Voucher was received by Merck (or its Related Party) or NewLink (or its Affiliate)), (i) in the event that NewLink (or any of its Affiliates) notifies the FDA of its intent to submit (or otherwise use) such Current Product Voucher, then NewLink shall, [\*\*], pay to Merck a one-time, non-refundable payment in the amount of (1) forty percent (40%) of the Current Product Voucher Value plus (2) any fees paid by Merck (or its Related Party) solely in connection with obtaining such Current Product Voucher (but not, for clarity, any fees paid in connection with any application for Marketing Authorization in connection with which such Current Product Voucher was obtained), and (ii) in the event that NewLink desires to sell, transfer or otherwise dispose of (however structured) such Current Product Voucher to a Third Party, then (x) NewLink shall notify Merck thereof in writing (and in all cases, prior to any sale, transfer or other disposition of such Current Product Voucher), and shall obtain the prior written approval of Merck to sell, transfer or otherwise dispose of such Current Product Voucher (including the terms thereof), such approval not to be unreasonably withheld, and (y) [\*\*] any such sale, transfer or other disposition, NewLink shall pay to Merck a non-refundable payment in the amount of (1) forty percent (40%) of any and all consideration payable to NewLink (or its Affiliate) in connection with such sale, transfer or other disposal plus (2) any fees paid by Merck (or its Related Party) solely in connection with obtaining such Current Product Voucher (but not, for clarity, any fees paid in connection with any application for Marketing Authorization in connection with which such Current Product Voucher was obtained). For clarity, the provisions of this Section 5.3 shall only apply with respect to one Current Product Voucher (i.e., the first Current Product Voucher issued) for the Current Product, and shall not apply to any additional or subsequent Current Product Vouchers that may issue in connection with the Current Product or any vouchers that may issue in connection with any other Products. As used in this Section 5.3.1, the term “**Current Product Voucher Value**” shall mean the value of the Current Product Voucher, which shall be mutually agreed to by the Parties [\*\*]; provided that if [\*\*], then [\*\*] to each of the Parties.

5.3.2 [\*\*]. If, at any time during the Term, [\*\*] Merck or a Related Party [\*\*] or to [\*\*] (the “[\*\*]”), [\*\*] shall promptly notify the other Party thereof. If Merck or a Related Party [\*\*], then, upon [\*\*], to the extent legally permissible, Merck (or such Related Party, as applicable) shall [\*\*], and in connection therewith, the Parties [\*\*]. In all cases (whether [\*\*] was received by [\*\*] or [\*\*] of its intent to [\*\*], then [\*\*] in the [\*\*] plus [\*\*] in connection with [\*\*] in connection with [\*\*], and [\*\*] to a Third Party, then [\*\*], and [\*\*] not to [\*\*], and [\*\*] of any and all [\*\*] in connection with [\*\*] by Merck (or its Related Party) solely in connection with [\*\*]. For clarity, the provisions of this Section 5.3 shall only apply with respect to [\*\*], and [\*\*]. As used in this Section 5.3.1, the term “[\*\*]” shall mean [\*\*], which shall be mutually agreed to by the Parties [\*\*]; provided that if [\*\*], then [\*\*] to each of the Parties.

5.3.3 **Obligation to [\*\*]**. Merck shall, upon NewLink’s reasonable request [\*\*], undertake [\*\*] to [\*\*] or [\*\*] that may be available to [\*\*].

5.3.4 **Tax Matters**. Upon the issuance of [\*\*] or [\*\*], the Parties shall discuss in good faith [\*\*] under this Section 5.3.4 [\*\*].

#### 5.4 Royalty Payments.

5.4.1 **Royalty Rates**. Subject to the other terms of this Section 5.4, on a Product-by-Product basis, during the Royalty Term for a given Product in a given country in the Royalty Bearing Territory, Merck shall make, on a Calendar Year basis, royalty payments to NewLink on the Product Net Sales of such Product in a given Calendar Year in such countries at the applicable royalty rate set forth below (which royalty rates shall be different for the Current Product and for any other Product as set forth below). For clarity, the royalties (and royalty tiers) shall be calculated separately on a Product-by-Product basis.

<b>Current Product</b>	
<b>Annual Product Net Sales of a given Product in the Royalty-Bearing Territory in a given Calendar Year</b>	<b>Royalty Rate for Product Net Sales</b>
Portion of annual Product Net Sales for a given Product in the applicable countries in the Royalty Bearing Territory up to and including \$[**] in a given Calendar Year	[**]%

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

Portion of annual Product Net Sales for a given Product in the applicable countries in the Royalty Bearing Territory greater than \$[**] and less than or equal to \$[**] in a given Calendar Year	[**]%
Portion of annual Product Net Sales for a given Product in the applicable countries in the Royalty Bearing Territory greater than \$[**] and less than or equal to \$[**] in a given Calendar Year	[**]%
Portion of annual Product Net Sales for a given Product in the applicable countries in the Royalty Bearing Territory greater than \$[**] in a given Calendar Year	[**]%
<b>Products other than Current Product</b>	
<b>Annual Product Net Sales of a given Product in the Royalty-Bearing Territory in a given Calendar Year</b>	<b>Royalty Rate for Product Net Sales</b>
Portion of annual Product Net Sales for a given Product in the applicable countries in the Royalty Bearing Territory up to and including \$[**] in a given Calendar Year	[**]%
Portion of annual Product Net Sales for a given Product in the applicable countries in the Royalty Bearing Territory greater than \$[**] and less than or equal to \$[**] in a given Calendar Year	[**]%
Portion of annual Product Net Sales for a given Product in the applicable countries in the Royalty Bearing Territory greater than \$[**] and less than or equal to \$[**] in a given Calendar Year	[**]%
Portion of annual Product Net Sales for a given Product in the applicable countries in the Royalty Bearing Territory greater than \$[**] in a given Calendar Year	[**]%

For clarity, (i) if no royalty is payable on a given unit of Product (e.g., following the Royalty Term for such Product in a given country or sales of a given Product outside of the Royalty Bearing Territory), then the Product Net Sales of such unit of Product shall not be included for purposes of determining the foregoing royalty tiers and (ii) Product Net Sales of a given Product will not be combined with

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

Product Net Sales of any other Product for purposes of determining the foregoing royalty tiers.

5.4.2 **Royalty Term.** Merck's royalty payment obligations under this Agreement with respect to a given Product shall commence upon [\*\*] in the Field anywhere in the Royalty Bearing Territory by Merck or Related Parties, and shall continue, (i) with respect to the [\*\*] Product, on a Product-by-Product basis, until [\*\*] expiration of the last to expire Valid Claim included in NewLink Patent Rights [\*\*] that Covers such Product, and (ii) with respect to [\*\*], on a Product-by-Product and country-by-country basis, until the later of (x) the expiration of the last to expire Valid Claim included in NewLink Patent Rights in the country of sale that Covers such Product in such country or (y) [\*\*] after the [\*\*] of such Product in such country (the "**Royalty Term**").

#### 5.4.3 **Royalty Reduction.**

(a) **Know-How Royalty.** Subject to Section 5.4.3(c) below, if a Product is generating Product Net Sales in a country in the Royalty Bearing Territory during the Royalty Term at a time when there is no Valid Claim (i) with respect to the [\*\*] Product, included in the NewLink Patent Rights [\*\*] that Covers such Product, [\*\*] (ii) with respect to [\*\*] than the [\*\*] Product, included within the NewLink Patent Rights in such country that Covers such Product in such country, then the royalty rate applicable to Product Net Sales of such Product in such country in the Royalty Bearing Territory pursuant to Section 5.4.1 thereafter shall be reduced by [\*\*].

(b) **Reduction for Third Party Payments.** Subject to Section 5.4.3(c) and 5.4.3(d) below, Merck or any Related Party obtains a right or license under any intellectual property of a Third Party (whether prior to, or after, the Effective Date), where the research, development, making, using, selling, offering for sale, or importing of Product (or Compound contained in such Product) by Merck or any Related Party would result in a payment to such Third Party, then Merck may deduct from the royalty payment that would otherwise have been due under this Section 5.4 with respect to Product Net Sales of such Product in a particular Calendar Quarter, an amount equal to [\*\*] pursuant to such right or license in connection with the research, development, making, using, selling, offering for sale, or importing of Product (or Compound contained therein) during such Calendar Quarter; provided, however, that in no event shall the royalties payable on Product Net Sales of Product be reduced by more than [\*\*] in any Calendar

Quarter by operation of this Section 5.4.3(b) (provided, however, that [\*\*] as a result of [\*\*] shall be [\*\*] with respect to such [\*\*]).

(c) **Payments to Public Health Canada by Merck.** Notwithstanding anything to the contrary contained herein, in the event that Merck (or its Related Party, as applicable) pays any royalties or other amounts directly to Public Health Canada in connection with any Compound or Product (or the research, development, making, using, selling, offering for sale, or importing thereof), then (i) [\*\*], and [\*\*] and (ii) to the extent that Merck [\*\*] from the [\*\*] to NewLink in a [\*\*], then NewLink [\*\*] for the [\*\*].

(d) **Minimum Royalty Rate.** Notwithstanding the foregoing provisions of this Section 5.4.3 (but subject to Section 5.4.3(c) and 5.4.6), for so long as NewLink [\*\*] as a result of sales of Product by Merck or its Related Parties in the Royalty Bearing Territory hereunder, in no event shall the royalty rate payable by Merck under this Section 5.4 due on Product Net Sales hereunder be reduced pursuant to the foregoing provisions of this Section 5.4.3 to less than [\*\*], including [\*\*]; provided that, for clarity, the provisions of this Section 5.4.3(d) are not intended to, and shall not be interpreted to, expand Merck's royalty obligations hereunder (other than with respect to the royalty rate payable by Merck as expressly set forth in this Section 5.4.3(d)), including [\*\*].

5.4.4 **Change in Sales Practices.** The Parties acknowledge that during the term of this Agreement, Merck's sales practices for [\*\*] to the extent [\*\*] may become [\*\*]. In such event, at the request of Merck, the Parties [\*\*] to the extent currently contemplated under this Section 5.4.

5.4.5 **Royalties for Bulk Compound.** In those cases in which Merck (or its Related Party) sells bulk Compound rather than Product in packaged form to an independent Third Party, the royalty obligations of this Section 5.4 shall be applicable to the bulk Compound only (but solely to the extent that a royalty would otherwise be payable on the Product incorporating such Compound).

5.4.6 [\*\*]. If [\*\*] with respect to Product in any country in the Royalty Bearing Territory [\*\*], then the [\*\*] in such country [\*\*] shall be [\*\*] and in such case, [\*\*]; provided that if as a result of this Section 5.4.6, the royalty rate on Product Net Sales of such Product in such country [\*\*] (or [\*\*], including taking into account [\*\*]), then for so long as [\*\*] pursuant to the [\*\*] hereunder in such country in the Royalty Bearing Territory (and provided that [\*\*] is still in effect with respect to [\*\*]), then the Parties [\*\*] between the [\*\*] on such [\*\*] and the [\*\*] with respect to [\*\*] in such country.

5.4.7 **Additional Conditions.** All royalties are subject to the following conditions:

- (a) that only one royalty shall be due with respect to the same unit of Product; and
- (b) that no royalties shall be due upon the sale or other transfer among Merck or its Related Parties, but in such cases the royalty shall be due and calculated upon Merck's or its Related Party's Product Net Sales to the first independent Third Party; and
- (c) the determination of whether a royalty will be calculated and payable hereunder shall be determined on a Product-by-Product basis.

5.4.8 **Royalty Reports and Payments.** Within [\*\*] after each Calendar Quarter, commencing with the Calendar Quarter during which the First Commercial Sale of the first Product is made anywhere in the Royalty Bearing Territory, Merck shall provide NewLink with a report that contains the following information for the applicable Calendar Quarter, on a Product-by-Product and country-by-country basis for the Royalty Bearing Territory: (i) the amount of gross sales of the Products, (ii) a reconciliation between gross sales and Product Net Sales, as specified in the definition thereof, and (iii) a calculation of the royalty payment due on such sales, including any royalty reduction made in accordance with this Section 5.4. Concurrent with the delivery of the applicable quarterly report, Merck shall pay in Dollars all royalties due to NewLink with respect to Product Net Sales by Merck and its Related Parties for such Calendar Quarter.

5.4.9 **Currency Exchange.** All payments to be made by a Party under this Agreement shall be made in Dollars, by wire transfer, pursuant to the instructions of the Party receiving payment, as designated from time to time. The wire instructions for NewLink are set forth on Schedule 5.4.9 (which instructions may be updated in writing by NewLink to Merck). For purposes of calculating the net royalty obligation, to the extent Product is sold in a currency other than Dollars, the amount received shall be converted into Dollars on a monthly basis using as a rate of exchange [\*\*].

## 5.5 Records and Audits.

5.5.1 Merck shall (and shall cause its Affiliates to) maintain complete and accurate records in sufficient detail to permit NewLink to confirm the accuracy of the royalty payments under this Agreement. Upon reasonable prior notice, such records shall be open during regular business hours for a period of [\*\*] from the creation of individual records for examination by an independent international

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

certified public accountant selected by NewLink and reasonably acceptable to Merck for the sole purpose of verifying for NewLink the accuracy of the royalty reports furnished by Merck pursuant to this Agreement or of any royalty payments made, or required to be made by Merck pursuant to this Agreement. Such audits shall not occur more often than [\*\*] each Calendar Year. Such auditor shall not disclose Merck's Confidential Information to NewLink, except to the extent such disclosure is necessary to verify the accuracy of the financial reports furnished by Merck or the amount of payments by Merck under this Agreement. If the accountant correctly identifies a discrepancy, any amounts shown to be owed but unpaid (or overpaid, as applicable) shall be paid by the applicable Party within [\*\*] after the accountant's report. NewLink shall bear the full cost of such audit unless such audit reveals an underpayment by Merck that resulted from a discrepancy in the financial report provided by Merck for the audited period, which underpayment was more than [\*\*], in which case Merck shall reimburse NewLink for the fees of the accountant for such audit.

5.5.2 Upon the expiration of [\*\*] following the end of any Calendar Year, the calculation royalties payable with respect to such Calendar Year shall be binding and conclusive upon NewLink, and Merck (and its Affiliates) shall be released from any liability or accountability with respect to such royalties for such Calendar Year.

5.5.3 NewLink shall treat all financial information subject to review under this Section 5.5 in accordance with the confidentiality and non-use provisions of this Agreement, and shall cause its accounting firm to enter into an acceptable confidentiality agreement with Merck and/or its Affiliates obligating it to retain all such Confidential Information in confidence pursuant to such confidentiality agreement.

## 5.6 Taxes.

5.6.1 **Generally.** Each Party will pay any and all taxes levied on account of all payments it receives under this Agreement except as otherwise provided in this Section 5.7.

5.6.2 **Transfer Taxes.** [\*\*] shall be liable for all transfer taxes (including value added tax (VAT), Canadian Goods and Services taxes (GST), sales and use tax, and other similar taxes), including interest ("**Transfer Taxes**") imposed upon any [\*\*] under this Agreement, including this Article 5. The Parties shall reasonably

cooperate in accordance with Applicable Laws to (i) minimize Transfer Taxes payable in connection with this Agreement and (ii) ensure all tax returns relating to Transfer Taxes are properly filed.

5.6.3 **Income Tax Withholding.** If Applicable Laws require that taxes be withheld with respect to any payments by under this Agreement, the payor will: (a) deduct those taxes from the remittable payment, (b) pay the taxes to the proper taxing authority, and (c) send evidence of the obligation together with proof of tax payment to the payee on a timely basis following that tax payment. Each Party agrees to reasonably cooperate with the other Party in claiming refunds or exemptions from such deductions or withholdings under any relevant agreement or treaty which is in effect. The Parties shall discuss applicable mechanisms for minimizing such taxes to the extent possible in compliance with Applicable Laws.

5.7 **NewLink Third Party Agreements.** Notwithstanding anything to the contrary herein, [\*\*], NewLink shall be solely responsible for (and [\*\*] to the extent [\*\*]) all costs and payments of any kind (including all upfront fees, annual payments, milestone payments and royalty payments) arising under any NewLink Third Party Agreements in connection with the Development, Manufacture, Commercialization or other exploitation of Compounds and/or Products hereunder.

## ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 **Representations And Warranties Of Each Party.** Each Party represents and warrants to the other Party that as of the Effective Date:

6.1.1 such Party is duly organized and validly existing under the laws of the state or jurisdiction of its organization and has full corporate power and authority to enter into this Agreement and to perform its obligations hereunder;

6.1.2 the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by the necessary corporate actions of such Party. This Agreement has been duly executed by such Party. This Agreement and any other documents contemplated hereby constitute valid and legally binding obligations of such Party enforceable against it in accordance with their respective terms, except to the extent that enforcement of the rights and remedies created thereby is subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application affecting the rights and remedies of creditors; and

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

6.1.3 the execution, delivery and performance by such Party of this Agreement and any other agreements and instruments contemplated hereunder will not (i) in any respect violate any statute, regulation, judgment, order, decree or other restriction of any governmental authority to which such Party is subject, (ii) violate any provision of the corporate charter, by-laws or other organizational documents of such Party, or (iii) constitute a violation or breach by such Party of any provision of any material contract, agreement or instrument to which such Party is a party or to which such Party may be subject although not a party.

**6.2 Additional NewLink Representations and Warranties.** NewLink represents and warrants to Merck that as of the Effective Date:

6.2.1 NewLink and NL each has the full right, power and authority to enter into this Agreement, to perform the activities hereunder (including the Transition Program) and to grant the license set forth in Section 3.1.1 and Section 3.2;

6.2.2 there are no claims, judgments or settlements against or owed by NewLink (or any of its Affiliates) and no pending or, to NewLink's knowledge, threatened claims or litigation, in each case, relating to the NewLink Patent Rights and/or NewLink Know-How and/or Compounds and/or Products;

6.2.3 Schedule 1.79 sets forth a true, correct and complete list of NewLink Patent Rights existing as of the Effective Date and such schedule contains all application numbers and filing dates, registration numbers and dates, jurisdictions and owners. The NewLink Patent Rights and NewLink Know-How constitute [\*\*], the Compounds and/or Products or the Development, Manufacture, Commercialization and/or use thereof, or the performance of the Transition Program;

6.2.4 all issued patents within the NewLink Patent Rights are in full force and effect, and, [\*\*], in whole or in part;

6.2.5 it (and its Affiliates) has not prior to the Effective Date (i) assigned, transferred, conveyed or otherwise encumbered its right, title and/or interest in NewLink Patent Rights or NewLink Know-How, or (ii) otherwise granted any rights to any Third Parties that would, in the case of clauses (i) and/or (ii), conflict with the rights granted to Merck hereunder;

6.2.6 to NewLink's knowledge, [\*\*];

- 6.2.7 it [\*\*] the NewLink Patent Rights and NewLink Know-How, all of which are, as at the Effective Date, [\*\*];
- 6.2.8 neither it nor any of its Affiliates has received any written notification from a Third Party that the research, development, manufacture, use, sale or import of Compounds or Products infringes or misappropriates the Patent Rights or Know-How owned or controlled by such Third Party, and NewLink has no knowledge that a Third Party has any basis for any such claim;
- 6.2.9 NewLink has [\*\*] regarding [\*\*], including [\*\*], and [\*\*];
- 6.2.10 NewLink has [\*\*] related to NewLink Patent Rights or NewLink Know-How licensed under this Agreement;
- 6.2.11 NewLink has [\*\*] Compound and/or Product [\*\*] from any [\*\*] or any [\*\*] in any [\*\*], or any other [\*\*] to NewLink or any of the Affiliates [\*\*], or [\*\*] subject of any [\*\*], in each case, with respect to [\*\*] related to the [\*\*];
- 6.2.12 other than [\*\*] or any other [\*\*] for any Compounds or Products, and, to the best of NewLink's knowledge, [\*\*] for any Compounds or Products. The [\*\*] and neither NewLink nor any of its Affiliates [\*\*];
- 6.2.13 NewLink has obtained all necessary consents, approvals and authorizations of all governmental authorities and other Persons required to be obtained by it as of the Effective Date, as applicable, in connection with the execution, delivery and performance of this Agreement;
- 6.2.14 NewLink (and its Affiliates) has not employed or otherwise used in any capacity, and will not (during the Transition Program) employ or otherwise use in any capacity, the services of any Person suspended, proposed for debarment or debarred under United States law, including under 21 USC 335a or any foreign equivalent thereof, with respect to the Compounds or Products or otherwise in performing any portion of the Transition Program (or any portion of the NewLink Funding Agreements);
- 6.2.15 all [\*\*] related to the Compounds and/or Products [\*\*] and, to NewLink's knowledge, all [\*\*] related to the Compounds and/or Products [\*\*] in accordance with all Applicable Laws;

- 6.2.16 all information and data provided by or on behalf of NewLink to Merck on or before the Effective Date in contemplation of this Agreement was and is true and accurate and complete in all material respects, and NewLink has not disclosed, failed to disclose, or cause to be disclosed, any material information or data that would reasonably be expected to cause the information and data that has been disclosed to be misleading in any material respect;
- 6.2.17 it [\*\*];
- 6.2.18 other than [\*\*], there are no [\*\*] or other [\*\*] the NewLink Know-How or NewLink Patent Rights;
- 6.2.19 with respect to each NewLink Existing Third Party Agreement and each NewLink Future Funding Agreement [\*\*] it is in full force and effect; [\*\*] to such [\*\*] or [\*\*] from the [\*\*] any of the [\*\*], and [\*\*] which could [\*\*] the scope of [\*\*] any of the [\*\*]; and [\*\*] relating to any [\*\*] or any other [\*\*];
- 6.2.20 the [\*\*] provided to Merck [\*\*] in accordance with [\*\*]. Such [\*\*] is not [\*\*] and is not [\*\*], under the [\*\*]. All such [\*\*];
- 6.2.21 Schedule 6.2.21 sets forth [\*\*] by NewLink to be [\*\*] (the “**Product Materials**”);
- 6.2.22 Other than the [\*\*], neither NewLink nor any of its Affiliates has [\*\*], and with respect to the [\*\*], NewLink has [\*\*] under the [\*\*];
- 6.2.23 Except with respect to [\*\*], neither NewLink nor its Affiliates [\*\*] for the [\*\*], in each case, other than with respect to the Current Compound and Current Product;
- 6.2.24 No Know-How or other intellectual property within the NewLink Know-How or NewLink Patent Rights [\*\*];
- 6.2.25 Except with respect to the rights expressly retained by Public Health Canada under the NewLink Canada License, [\*\*] Know-How, Patent Rights or other intellectual property [\*\*], and, except with respect to the rights expressly retained by Public Health Canada under the NewLink Canada License [\*\*] to any such [\*\*]; and
- 6.2.26 NewLink is a wholly-owned subsidiary of NL, and, except as set forth on Schedule 6.2.26, there are no other Affiliates of either NewLink or NL.

### 6.3 Additional Merck Representations and Warranties.

6.3.1 Merck represents and warrants to NewLink that as of the Effective Date, Merck has determined pursuant to 16 C.F.R. Sec. 801.10 that no filing is required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended and the rules promulgated thereunder, with respect to the subject matter of this Agreement.

6.4 **Warranty Disclaimer.** EACH PARTY HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREIN NOT EXPRESSLY MADE IN THIS AGREEMENT TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAWS, INCLUDING WITH RESPECT TO THE COMPOUNDS, PRODUCTS, OR ANY TECHNOLOGY OR OTHER INTELLECTUAL PROPERTY LICENSED OR GRANTED UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, QUALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE. FOR THE AVOIDANCE OF DOUBT, NOTHING CONTAINED IN THIS SECTION 6.4 SHALL OPERATE TO LIMIT OR INVALIDATE ANY EXPRESS REPRESENTATION OR WARRANTY CONTAINED HEREIN.

6.5 **NewLink Third Party Agreements.** NewLink represents and warrants to Merck that [\*\*] and [\*\*], and [\*\*] as of the Effective Date. NewLink [\*\*] (a) [\*\*] in full force and effect, [\*\*]; (b) [\*\*] has been [\*\*] any of the [\*\*]; (c) [\*\*] of any [\*\*] any of the [\*\*] or [\*\*], made by [\*\*] and (d) to the extent [\*\*], it shall promptly [\*\*] of all other [\*\*] to such [\*\*] related to such [\*\*].

6.6 [\*\*]. During the period from the Effective Date until [\*\*], each Party agrees and covenants to [\*\*] or the Parties [\*\*]; provided, however, that [\*\*] such Party [\*\*]. A violation of [\*\*] may be [\*\*].

## ARTICLE 7 INTELLECTUAL PROPERTY

7.1 **Ownership of Background Technology.** As between the Parties, any NewLink Know-How existing prior to the Effective Date and owned by NewLink shall, during the Term and upon expiration or termination of this Agreement, continue to be owned exclusively by NewLink. As between the Parties, any Merck Know-How shall, during the Term and upon expiration or termination of this Agreement, continue to be owned exclusively by Merck.

## 7.2 Program Know-How.

7.2.1 **Ownership.** For purposes of determining ownership under this Section 7.2.1, inventorship of Program Know-How and Program Patent Rights shall be determined in accordance with United States patent laws (regardless of where the applicable activities occurred). Notwithstanding the foregoing, all right, title and interest in any Program Know-How and Program Patent Rights, in each case, shall be determined in accordance with the following terms and conditions:

- (a) As between the Parties, NewLink shall own all right, title and interest in any Program Know-How (and Program Patent Rights that claim or cover such Program Know-How) that is conceived, discovered or reduced to practice solely by one or more employees, agents or consultants of NewLink, its Affiliates, or its subcontractors (but excluding Merck (or its Affiliates) as a subcontractor of NewLink under any NewLink Funding Agreement) (such Program Know-How, the “**NewLink Program Know-How**” and such Program Patent Rights, the “**NewLink Program Patent Rights**”);
- (b) As between the Parties, Merck shall own all right, title and interest in any Program Know-How (and Program Patent Rights that claim or cover such Program Know-How) that is conceived, discovered or reduced to practice solely by one or more employees, agents or consultants of Merck, its Affiliates, or its subcontractors (such Program Know-How, the “**Merck Program Know-How**” and such Program Patent Rights, the “**Merck Program Patent Rights**”); and
- (c) NewLink and Merck shall jointly own all right, title and interest in any Program Know-How (and Program Patent Rights that claim or cover such Program Know-How) that is conceived, discovered or reduced to practice by one or more employees, agents or consultants of NewLink, its Affiliates, or its subcontractors, together with one or more employees, agents or consultants of Merck, its Affiliates, or its subcontractors (such Program Know-How, the “**Joint Program Know-How**” and such Program Patent Rights, the “**Joint Program Patent Rights**”). Subject to the licenses granted to the other Party under this Agreement and the other terms of this Agreement, each Party has a right to exploit its interest in such Joint Program Know-How and Joint Program Patent Rights without the consent of, and without accounting to, the other Party; provided, however, that for clarity, the foregoing joint ownership rights with respect to Joint Program Know-How and Joint Program Patent Rights shall not be construed as granting, conveying or creating any license or other rights to the other Party’s intellectual property, unless otherwise expressly set forth in this Agreement.

**7.2.2 Assignment of Interests to Effectuate Ownership of Joint Program Know-How and Joint Program Patent Rights.** With respect to any Joint Program Know-How and Joint Program Patent Rights, each of NewLink and Merck shall on behalf of itself and each of their respective Affiliates, employees and contractors hereunder, assign to one another (without payment of additional consideration), in perpetuity throughout the world, ownership of an undivided interest in and to such Program Know-How and Program Patent Rights if necessary to effect the ownership of such Program Know-How and Program Patent Rights as set forth in Section 7.2.1(c), subject to any licenses expressly granted under this Agreement. In furtherance of the foregoing, each Party shall, upon request by the other, promptly undertake and perform (and/or cause its Affiliates and its and their respect employees and/or agents to promptly undertake and perform) such further actions as are reasonably necessary for NewLink and Merck to, as between the Parties, perfect its title in any such Program Know-How and Program Patent Rights as set forth in Section 7.2.1(c), as, and to the extent, applicable, including by causing the execution of any assignments or other legal documentation, and/or providing the other Party or its patent counsel with reasonable access to any employees or agents who may be inventors of such Program Know-How and Program Patent Rights.

### **7.3 Filing, Prosecution and Maintenance of Patent Rights.**

#### **7.3.1 Joint Program Patent Rights and NewLink Patent Rights.**

(a) Joint Program Patent Rights and NewLink Patent Rights. With respect to any Joint Program Patent Rights and any NewLink Patent Rights, [\*\*] shall have the first right (in its discretion), at its cost, to Prosecute such Patent Rights in the name of both Parties (with respect to Joint Program Patent Rights) or NewLink (with respect to NewLink Patent Rights); provided, however, that [\*\*] shall only have the right to Prosecute [\*\*] and [\*\*] to the extent such Prosecution [\*\*]. In connection therewith, [\*\*] as may be [\*\*] the Joint Program Patent Rights and NewLink Patent Rights. [\*\*] may elect to use outside counsel for such Prosecution. With respect to a given Joint Program Patent Right or NewLink Patent Right, [\*\*] (i) may elect not to Prosecute, (ii) may elect not to Prosecute in a particular country (including electing not to validate in a particular country) and/or (iii) may elect to discontinue Prosecution in a particular country; and in case of clause (ii) or clause (iii), [\*\*] shall provide [\*\*] with notice thereof (provided that with respect to the foregoing clause (iii), such notice shall be provided in a timely manner) and [\*\*] shall have the right (but not the obligation), at its sole expense and upon written notice to [\*\*], to assume such responsibility for the Prosecution of such Joint Program Patent Right (in the name of both Parties) or NewLink Patent Rights (in the

name of NewLink) to the extent [\*\*] has elected not to do so; provided, however, that if [\*\*] elects to [\*\*] in the [\*\*] in such [\*\*], then, in the event that [\*\*] thereafter [\*\*], and the [\*\*] in such country under such [\*\*], then [\*\*] shall [\*\*] incurred by [\*\*] in such country [\*\*]. [\*\*] shall comply with all applicable obligations (but [\*\*]) under [\*\*] applicable to the Prosecution of [\*\*] by [\*\*] and [\*\*].

(b) **Review and Consultation.** With respect to the Joint Program Patent Rights and NewLink Patent Rights, upon the written request of the non-Prosecuting Party, the Prosecuting Party shall give the non-Prosecuting Party an opportunity to review the text of any application before filing, shall consult with the non-Prosecuting Party with respect thereto (and shall consider the non-Prosecuting Party's comments thereto in good faith), and shall supply the non-Prosecuting Party with a copy of the application as filed, together with notice of its filing date and serial number. Upon request of the non-Prosecuting Party, the Prosecuting Party shall keep the other Party advised of the status of such actual and prospective patent filings and, upon such other Party's request, shall provide advance copies of any material papers to be filed related to the filing, prosecution and maintenance of such patent filings. Each Party shall promptly give notice to the other Party of the grant, lapse, revocation, surrender, invalidation or abandonment of such Joint Program Patent Rights or NewLink Patent Rights for which it is responsible for the filing, prosecution and maintenance.

7.3.2 **Merck Patent Rights.** Merck shall have the sole right, in its discretion and at its own expense, to Prosecute the Merck Patent Rights, and NewLink shall have no rights in connection therewith.

7.3.3 **Cooperation.** As requested by the Prosecuting Party, the non-Prosecuting Party shall provide the Prosecuting Party with reasonable assistance in connection with the Prosecution of Patent Rights under this Section 7.3, including (i) giving the Prosecuting Party reasonable access to its employees, agents, consultants and subcontractors and those of the non-Prosecuting Party's Affiliates for the purposes of identifying inventors of subject matter in any such Patent Rights, and (ii) obtaining any necessary declarations and assignments from its named inventors or those under obligation to assign inventions hereunder, and providing relevant technical reports (including, if necessary, laboratory notebooks), to the Prosecuting Party concerning the subject invention. Without limiting the foregoing, if a power of attorney from the non-Prosecuting Party is needed to facilitate the Prosecuting Party's Prosecution of Patent Rights in accordance with

this Section 7.3, the non-Prosecuting Party shall obtain and provide to the Prosecuting Party such power of attorney.

7.3.4 **Prosecution Matters.** For the avoidance of doubt, all interferences, oppositions, appeals or petitions to any board of appeals in any patent office, appeals to any court for any patent office decisions, reissue proceedings, invalidation proceedings, re-examination proceedings, *inter partes* reviews, post grant reviews, derivation proceedings or other similar administrative proceedings or administrative appeals thereof, with respect to any Patent Rights under this Agreement shall be considered patent Prosecution matters, and shall be handled in accordance with this Section 7.3. With respect thereto, the non-Prosecuting Party shall (i) join (if required to bring such action) such action voluntarily, and (ii) execute and cause its Affiliates to execute all documents necessary for the Prosecuting Party to initiate such action in the event that the Prosecuting Party is unable to initiate or prosecute such action solely in its own name. In all cases, with respect to the Prosecution of the NewLink Patent Rights or Joint Program Patent Rights, as applicable, the Prosecuting Party shall not enter into any settlement that would oblige the non-Prosecuting Party (or any of its Related Parties) to make any payment or would have a detrimental effect on the Compounds or Products, or the rights or licenses of the non-Prosecuting Party hereunder, without the non-Prosecuting Party's prior written consent (not to be unreasonably withheld).

#### 7.4 Enforcement of Patent Rights.

7.4.1 **NewLink Patent Rights and Joint Program Patent Rights.** NewLink shall give Merck prompt written notice of either (i) any infringement of NewLink Patent Rights or Joint Program Patent Rights and/or (ii) any misappropriation or misuse of NewLink Know-How or Joint Program Know-How that may come to NewLink's attention. Merck and NewLink shall thereafter consult and cooperate fully to determine a course of action, including the commencement of legal action by either or both Merck and NewLink, to terminate any infringement of NewLink Patent Rights or Joint Program Patent Rights or any misappropriation or misuse of NewLink Know-How or Joint Program Know-How, as applicable. However, subject at all times to any applicable terms and conditions of the NewLink Canada License with respect to NewLink Patent Rights that are owned by Public Health Canada and licensed to NewLink under the NewLink Canada License, Merck, upon notice to NewLink, shall have the first right to initiate and prosecute such

legal action at its own expense (including, in the name of NewLink, if necessary) or to control the defense of any declaratory judgment action relating to NewLink Patent Rights, Joint Program Patent Rights, NewLink Know-How or Joint Program Know-How, as applicable. If NewLink is required to join in such action in order for Merck to bring such action, then, at the reasonable request of Merck, NewLink shall join such action. Merck shall promptly inform NewLink if it elects not to exercise such first right and NewLink shall thereafter have the right (in its discretion) to initiate and prosecute such action (or to control the defense of such declaratory judgment action, as applicable), at its own expense; provided, however, that in all cases, NewLink shall not enter into any settlement that would oblige Merck to make any payment or would have a detrimental effect on the Compounds or Products, or the rights or licenses of Merck hereunder, without Merck's prior written consent. Each Party shall have the right to be represented by counsel of its own choice. For clarity, NewLink shall not bring any action to enforce any NewLink Patent Rights or NewLink Know-How or Joint Program Patent Rights or Joint Program Know-How, as applicable, unless (i) Merck has elected not to exercise its first right as set forth in this Section 7.4.1 or (ii) Merck otherwise consents thereto in writing (in Merck's sole discretion), and in all cases, NewLink shall not agree to any settlement in connection therewith without the prior written consent of Merck (in Merck's sole discretion). Merck shall comply with all obligations (other than [\*\*]) under the NewLink Canada License applicable to the enforcement of the NewLink Patent Rights that are owned by Public Health Canada and licensed to NewLink under the NewLink Canada License.

7.4.2 **Cooperation.** For any action to terminate any infringement of NewLink Patent Rights or Joint Program Patent Rights, or any misappropriation or misuse of NewLink Know-How or Joint Program Know-How, in the event that Merck is unable to initiate or prosecute such action solely in its own name, NewLink shall join such action voluntarily and execute and cause its Affiliates to execute all documents necessary for Merck to initiate litigation to prosecute and maintain such action. In connection with any action by Merck, NewLink shall cooperate fully with Merck and NewLink shall provide Merck with any information or assistance that Merck may reasonably request.

7.4.3 **Information.** In connection with the foregoing, each Party shall keep the other informed of developments in any action or proceeding, including, to the extent

permissible by law, consultation on and approval of any settlement, the status of any settlement negotiations and the terms of any offer related thereto.

7.4.4 **Recoveries.** Subject at all times to any applicable recovery terms of the NewLink Canada License with respect to enforcement actions of the NewLink Patent Rights that are owned by Public Health Canada and licensed to NewLink under the NewLink Canada License, any recovery obtained by either or both Merck and NewLink in connection with or as a result of any action contemplated by the foregoing provisions of Section 7.4.1, whether by settlement or otherwise, shall be shared in order as follows:

- (a) the Party which initiated and prosecuted the action shall recoup all of its costs and expenses incurred in connection with the action;
- (b) the other Party shall then, to the extent possible, recover its costs and expenses incurred in connection with the action; and
- (c) the amount of any recovery remaining shall [\*\*].

7.4.5 **Biosimilar Applications.**

- (a) Notwithstanding the foregoing provisions of this Section 7.4, if either Party receives a copy of a Biosimilar Application referencing a Product or otherwise becomes aware that such a Biosimilar Application has been submitted to a Regulatory Authority for marketing authorization (such as in an instance described in 42 U.S.C. §262(l)(9)(C), the remainder of this Section 7.4.5 shall apply. Such Party shall within [\*\*] notify the other Party. The owner of the relevant patents shall then seek permission to view the application and related confidential information from the filer of the Biosimilar Application if necessary under 42 U.S.C. §262(l)(1)(B)(iii). If either Party receives any equivalent or similar communication or notice in the United States or any other jurisdiction, either Party shall within [\*\*] notify and provide the other Party copies of such communication to the extent permitted by Applicable Laws. Regardless of the Party that is the “reference product sponsor,” as defined in 42 U.S.C. §262(l)(1)(A), for purposes of such Biosimilar Application:
  - (i) Merck shall designate, to the extent permitted by law, or otherwise NewLink shall designate in accordance with Merck’s instructions, the outside counsel and in-house counsel who shall receive confidential access to the Biosimilar Application pursuant to 42 U.S.C. §262(l)(1)(B)(ii).

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

- (ii) Merck shall have the right, after consulting with NewLink, to list any patents, including those within the NewLink Patent Rights, as required pursuant to 42 U.S.C. §262(l)(3)(A) or 42 U.S.C. §262(l)(7), to respond to any communications with respect to such lists from the filer of the Biosimilar Application, to negotiate with the filer of the Biosimilar Application as to whether to utilize a different mechanism for information exchange other than that specified in 42 U.S.C. §262(l)(1) and as to the patents that will be subject to the initial litigation procedure as described in 42 U.S.C. §262(l)(4), to decide which patent or patents shall be selected for initial litigation under 42 U.S.C. §262(l)(5)(B)(i)(II), and to commence such litigation under 42 U.S.C. §262(l)(6). If required pursuant to Applicable Law, upon Merck's request, NewLink shall execute these tasks after consulting with Merck.
- (iii) Merck shall have the right, after consulting with NewLink, to identify patents, including those within the NewLink Patent Rights, or respond to relevant communications under any equivalent or similar listing to those described in the preceding clause (ii) in any other jurisdiction outside of the United States. If required pursuant to Applicable Law, upon Merck's request, NewLink shall assist in the preparation of such list and make such response after consulting with Merck.
- (iv) NewLink shall cooperate with Merck's reasonable requests in connection with the foregoing activities to the extent required or permitted by Applicable Laws. Merck shall consult with NewLink prior to identifying any NewLink Patent Rights to a Third Party as contemplated by this Section 7.4.5. Merck shall consider in good faith advice and suggestions with respect thereto received from NewLink, and notify NewLink of any such lists or communications promptly after they are made.
- (v) Each Party shall within [\*\*] after receiving any notice of commercial marketing provided by the filer of a Biosimilar Application pursuant to 42 U.S.C. §262(l)(8)(A), notify the other Party. To the extent permitted by law, Merck shall have the first right, but not the obligation, to seek an injunction against such commercial marketing as permitted pursuant to 42 U.S.C. §262(l)(8)(B) and to file an action for infringement. If required pursuant to Applicable Law, upon Merck's request, NewLink shall assist in seeking such injunction or filing such infringement action after consulting with Merck. Except as otherwise provided in this Section 7.4.5, any such action shall be subject to the terms and conditions of Section 7.4.1 through 7.4.4 in relation to actions for infringement brought by Merck.

(vi) The Parties recognize that procedures other than those set forth above in Section 7.4.5 may apply with respect to Biosimilar Applications. In the event that the Parties determine that certain provisions of Applicable Laws in the United States or in any other country in the Territory apply to actions taken by the Parties with respect to Biosimilar Applications under Section 7.4.5 in such country, the Parties shall comply with any such Applicable Laws in such country (and any relevant and reasonable procedures established by Parties) in exercising their rights and obligations with respect to Biosimilar Applications under this Section 7.4.5

(b) As used herein, the term “**Biosimilar Application**” means an application or submission filed with a Regulatory Authority for Marketing Authorization of a pharmaceutical or biological product claimed to be biosimilar or interchangeable to any Product or otherwise relying on the approval of such Product, including, for example, an application filed under 42 U.S.C. §262(k).

**7.4.6 Merck Patent Rights and Merck Know-How.** Notwithstanding the foregoing provisions of this Section 7.4, Merck shall have the sole right, in its discretion, to handle any action with respect to any infringement of Merck Patent Rights, or misappropriation of Merck Know-How, including that Merck shall have the sole right, in its discretion, to handle any certification matter regarding any Merck Patent Rights with respect to any Biosimilar Application as set forth in Section 7.4.5, and NewLink shall have no rights in connection with any of the foregoing. For any action with respect to any infringement of Merck Patent Rights or misappropriation of Merck Know-How (including in connection with any Biosimilar Application), in the event that Merck is unable to initiate or prosecute such action solely in its own name, NewLink shall, at Merck’s request and expense, join such action voluntarily and execute and cause its Affiliates to execute all documents necessary for Merck to initiate litigation to prosecute and maintain such action. In connection with any action, at the request of Merck, NewLink shall, at Merck’s expense, provide Merck with reasonable assistance that Merck may reasonably request. As between the Parties, any recovery obtained by Merck in connection with or as a result of any action contemplated by the provisions of this Section 7.4.6, whether by settlement or otherwise, shall be retained solely by Merck. In all cases, NewLink shall give Merck prompt written notice of any infringement of any Merck Patent Rights that may come to its attention and/or any certification regarding any Merck Patent Rights it has received or otherwise becomes aware in connection with any Biosimilar

Application (and NewLink shall provide Merck with a copy of such certification within [\*\*] of receipt).

**7.5 Patent Term Extension.** NewLink shall reasonably cooperate with Merck, including providing reasonable assistance to Merck (including executing any documents as may reasonably be required), in efforts to seek and obtain patent term restoration or supplemental protection certificates or their equivalents in any country in the Territory where applicable to Joint Program Patent Rights, NewLink Patent Rights or Merck Patent Rights, including as may be available to the Parties under the provisions of the Drug Price Competition and Patent Term Restoration Act of 1984 or comparable laws outside the United States of America, in each case, in connection with the Products. In the event that elections with respect to obtaining such patent term restoration or supplemental protection certificates or their equivalents are to be made in relation to Joint Program Patent Rights or NewLink Patent Rights or Merck Patent Rights, Merck shall have the right to make the election and NewLink agrees to abide by such election.

**7.6 Other Patent Cooperation.** At the request of [\*\*] shall reasonably cooperate with [\*\*] with respect to patent protection with respect to the Program Know-How, including to take reasonable actions [\*\*] for United States patents and patent applications, in each case, as determined by [\*\*].

**7.7 Infringement or Misappropriation Claims with Respect to Compound or Product.** NewLink shall give Merck prompt written notice if any Third Party asserts, or if NewLink otherwise becomes aware, that a Third Party's Patent Rights or Know-How may be infringed or misappropriated by the research, development, making, using, selling, offering for sale, importing, exporting or otherwise exploiting any Compounds or Products. Subject to the provisions of Section 9.1.1 (Indemnity-Merck) and 9.1.2 (Indemnity-NewLink), Merck shall have the sole right (regardless of whether notified by NewLink pursuant to the foregoing provisions of this Section 7.7), but not the obligation, using counsel of its choice, to control the defense of any infringement or misappropriation action (including any declaratory judgment action) brought by a Third Party relating to the infringement or misappropriation of a Third Party's Patent Rights or Know-How or other intellectual property by the research, development, making, using, selling, offering for sale, importing, exporting or otherwise exploiting any Compounds or Products, and NewLink shall have no rights, and shall not take any actions, in connection therewith. In connection with any such action, NewLink shall cooperate fully with Merck and NewLink will provide Merck with any information or assistance that Merck may request, and in the event that Merck is unable to bring such action solely in its own

name, NewLink shall join such action voluntarily and execute and cause its Affiliates to execute all documents necessary for Merck to bring such action.

## ARTICLE 8 TERM AND TERMINATION

**8.1 Term and Expiration.** This Agreement shall become effective upon the Effective Date and, if not otherwise terminated earlier pursuant to this Article 8, shall expire on a Product-by-Product basis upon the expiration of the royalty payment obligations hereunder with respect to the applicable Product (the “**Term**”). This Agreement shall expire in its entirety (if not otherwise terminated earlier pursuant to this Article 8) on the date that this Agreement has expired with respect to all Products. Upon expiration of this Agreement with respect to a given Product under this Section 8.1, [\*\*], and, upon expiration of this Agreement in its entirety under this Section 8.1, [\*\*].

### 8.2 Other Termination.

8.2.1 Merck shall have the right to terminate this Agreement at any time in its sole discretion by giving [\*\*] advance written notice to NewLink; provided, however, that such termination shall be effective immediately if Merck elects to terminate this Agreement for [\*\*] (a “**Safety Termination**”). The Parties hereby acknowledge and agree that in the event that Merck delivers notice of termination to NewLink pursuant to this Section 8.2.1, but prior to such termination becoming effective, [\*\*], then, notwithstanding [\*\*] or anything to the contrary contained herein, [\*\*].

8.2.2 If, at any time during the Term, a BLA has not been submitted for at least one (1) Product and Merck [\*\*] for an Alternative Product, NewLink shall have the right to terminate this Agreement on [\*\*] advance written notice to Merck with respect to all Products other than [\*\*]; provided that such notification of NewLink’s exercise of its termination right under this Section 8.2.2 shall be provided within [\*\*] for [\*\*] Alternative Product. As used herein, “**Alternate Product**” shall mean [\*\*].

### 8.3 Termination for Cause.

8.3.1 **Cause for Termination.** This Agreement may be terminated at any time during the Term:

(a) upon written notice by NewLink if Merck is in material breach of (i) its Product Diligence Obligations pursuant to Section 3.5.1 by causes and reasons within its control

or (ii) any obligation to make payments to NewLink hereunder, and has not cured such breach within [\*\*] after written notice requesting cure of the breach (provided, however that such initial [\*\*] cure period shall be extended for an additional [\*\*] for so long as [\*\*]; provided, however, in the event of a good faith dispute with respect to the existence of a material breach, the [\*\*] cure period shall be tolled until such time as the dispute is resolved pursuant to Section 10.6; provided further, however, that it is agreed that termination pursuant to this Section 8.3.1(a) shall be on a Product-by-Product basis to which the breach relates and that NewLink cannot terminate this Agreement under this Section 8.3.1(a) with respect to the non-affected Products (and the effects of termination in Section 8.3.2 shall only apply with respect to such terminated Product); or

(b) by a Party upon the filing or institution of bankruptcy, reorganization, liquidation or receivership proceedings, or upon an assignment of a substantial portion of the assets for the benefit of creditors, by the other Party; provided, however, that in the case of any involuntary bankruptcy proceeding such right to terminate shall only become effective if the Party consents to the involuntary bankruptcy or such proceeding is not dismissed within [\*\*] after the filing thereof (an “**Insolvency Event**”).

**8.3.2 Effect of Termination.** Upon termination (but not expiration) of this Agreement for any reason (other than termination by Merck pursuant to Section 8.3.1(b)), all licenses and other rights granted hereunder shall terminate (except those that expressly survive as set forth in Section 8.4). In addition in such case, [\*\*] the following consequences shall apply; provided that if this Agreement is terminated only with respect to a particular Product or Product(s) the following shall apply solely with respect to such Product or Product(s):

(a) **Terminated Products.** Following termination NewLink may elect to receive (which election shall be made in writing to Merck within [\*\*] following termination), and Merck hereby grants to NewLink, effective upon such election, [\*\*] to research, develop, import, use, make, have made, offer for sale and sell the Current Product (if this Agreement is terminated with respect to the Current Product) and any other Product [\*\*], but excluding [\*\*] (such Products, [\*\*] “**Terminated Products**”), in each case, in the Field in the Territory. In consideration for such license, the Parties shall agree to, [\*\*] shall be [\*\*]. If the Parties are unable to agree [\*\*], either Party [\*\*] and all of [\*\*]. Each Party shall [\*\*], and the [\*\*]. The Parties shall [\*\*] and the [\*\*]. Notwithstanding the provisions of this Section 8.3.2(a), the licenses in this Section 8.3.2(a) shall not be effective until such time as the Parties agree [\*\*].

- (b) **Regulatory Documentation.** Promptly following the effective date of such termination, Merck shall transfer and assign to NewLink all of its (and its Affiliates) material Regulatory Documentation and data relating solely and exclusively to any Terminated Products (provided, however, that if there is additional Regulatory Documentation or data in Merck's (or its Affiliates) Control related to the Terminated Products that is necessary for NewLink to continue to Develop and Commercialize such Terminated Product, then at the written request of NewLink (which request shall be made within [\*\*] following the effective date of termination), Merck shall use Commercially Reasonable Efforts to provide NewLink with access to such Regulatory Documentation and data (provided that Merck may redact any and all portions thereof not related to the Terminated Product)), in each case, to the extent [\*\*].
- (c) **Transition Assistance.** Merck shall, [\*\*], provide the following transitional assistance upon request by NewLink:
- (i) Merck shall promptly destroy or return to NewLink all Know-How, data, materials and other Confidential Information made available to Merck by NewLink under this Agreement.
- (ii) Merck shall, at NewLink's request, provide to NewLink (including when available, in electronic format) a copy of the physical embodiment of all Merck Know-How that is directly related to any Terminated Product and licensed to NewLink pursuant to Section 8.3.2(a); provided that NewLink shall comply with the confidentiality and non-use provisions set forth in Article 4 with respect to such Merck Know-How, and NewLink shall only use such Merck Know-How in accordance with the licenses pursuant to Section 8.3.2(a).
- (iii) Merck shall [\*\*] all inventory of Terminated Product in Merck's (or its Affiliate's) possession, and in connection therewith, [\*\*].
- (iv) Merck shall assign back to NewLink any [\*\*] that relate solely and exclusively to the Terminated Product.
- (v) Merck shall assign or transfer to NewLink any manufacturing agreement between Merck and a Third Party contract manufacturer with respect to such Terminated Product, to the extent assignable (and solely to the extent that such manufacturing agreement does not relate to any other products).
- (d) **[\*\*]; Other Provisions.** Notwithstanding the foregoing provisions of this Section 8.3.2, any [\*\*] to provide [\*\*] shall not [\*\*]. All Regulatory Documentation, Know-How, data,

information, correspondence and other items provided to NewLink pursuant to this Section 8.3.2 shall be provided [\*\*], and shall [\*\*]. NewLink shall provide reasonable assistance to Merck in connection with the transfer and delivery of the foregoing items.

(e) **Wind-Down.** Notwithstanding the foregoing provisions of this Section 8.3.2, the licenses granted to Merck pursuant to Section 3.1 and Section 3.2 shall survive for [\*\*] following the effective date of termination in order for Merck (and its Affiliates, sublicensees and distributors), [\*\*], during the [\*\*] period immediately following the effective date of termination, to (i) finish or otherwise wind-down any ongoing Clinical Trials with respect to any Compounds or Products hereunder or transfer such Clinical Trials (where Merck is permitted to do so under Applicable Laws) to NewLink and (ii) finish any work-in-progress and sell any Products or Compounds remaining in inventory, in accordance with the terms of this Agreement; provided that, for clarity, [\*\*] and; provided further, that such licenses shall be non-exclusive.

**8.3.3 Effect of Termination by Merck for Insolvency Event.** In the event that this Agreement is terminated by Merck under Section 8.3.1(b) then the provisions of this Section 8.3.3 shall apply (and the provisions of Section 8.3.2 shall not apply). In the event that this Agreement is terminated due to the rejection of this Agreement by or on behalf of NewLink due to an Insolvency Event (including under Section 365 of the United States Bankruptcy Code (the “Code”), as applicable), all licenses and rights to licenses granted under or pursuant to this Agreement by NewLink to Merck are and shall otherwise be deemed to be (including for purposes of Section 365(n) of the Code, as applicable) licenses of rights to “intellectual property” (including as defined under Section 101(35A) of the Code, as applicable). The Parties agree that Merck, as a licensee of such rights under this Agreement, shall retain and may fully exercise all of its rights and elections under any applicable insolvency statute (including the Code), and that upon commencement of an Insolvency Event by or against NewLink, Merck shall be entitled to a complete duplicate of or complete access to (as Merck deems appropriate), any such intellectual property and all embodiments of such intellectual property. Such intellectual property and all embodiments thereof shall be promptly delivered to Merck (i) upon any such commencement of a bankruptcy proceeding upon written request therefore by Merck, unless NewLink elects to continue to perform all of its obligations under this Agreement or (ii) if not delivered under (i) above, upon the rejection of this Agreement by or on behalf of NewLink, then upon written request therefore. The provisions of this Section 8.3.3 shall be (1) without prejudice to any rights Merck may have arising

under any applicable insolvency statute or other Applicable Law (including the Code, as applicable) and (2) effective only to the extent permitted by Applicable Law (including the Code, as applicable).

**8.4 Effect of Expiration or Termination; Survival.** Subject to a Party's continuing right to use and disclose Confidential Information of the other Party under the surviving license pursuant to this Article 8, if any, following expiration or any early termination of this Agreement, each Party shall destroy, and confirm in writing that it has destroyed, all Confidential Information in tangible form and substances or compositions delivered or provided by the other Party, as well as any other material provided by the other Party in any medium (provided, however, that the receiving Party may keep one copy of Confidential Information received from the other Party in its confidential legal archives to confirm compliance with the non-use and non-disclosure provisions of this Agreement). Expiration or termination of this Agreement shall not relieve the Parties of any obligation accruing prior to such expiration or termination. Each Party shall pay all amounts then due and owing as of the expiration or termination date. Any expiration or termination of this Agreement shall be without prejudice to the rights of either Party against the other accrued or accruing under this Agreement prior to expiration or termination. The provisions of Sections 4.1, 4.2, 4.4, 4.5, 4.6.1, 4.9 and 4.10 shall survive the expiration or termination of this Agreement and shall continue in effect for [\*\*]. In addition, the provisions of Articles 1 (as necessary for the interpretation of the other surviving provisions), 9 and 10, and Sections 2.9.4 (but solely with respect to the penultimate sentence thereof), 2.10.1, 2.10.2, 5.3 (but solely with respect to any [\*\*] or [\*\*]), as applicable, received during the Term, and excluding Section 5.3.3), 5.4 (solely with respect to Product Net Sales hereunder prior to the effective date of termination or Product Net Sales by Merck under Section 8.3.2(e), but in each case, solely to the extent royalties would otherwise be payable on such Product Net Sales in accordance with Section 5.4), 5.5, 5.6, 5.7, 6.4, 7.1, 7.2, 8.1, 8.3.2, 8.3.3 and this Section 8.4 shall survive any expiration or termination of this Agreement.

## ARTICLE 9 INDEMNITY; LIMITATIONS ON LIABILITY

### 9.1 Indemnity; Insurance.

9.1.1 **Merck.** Merck shall indemnify, defend and hold NewLink and its Affiliates and their respective directors, officers, employees, agents and their respective successors, heirs and assigns (the "**NewLink Indemnitees**") harmless from and against any losses, costs, claims, damages, liabilities or expense (including

reasonable attorneys' and professional fees and other expenses of litigation) (collectively, "**Liabilities**") arising, directly or indirectly out of or in connection with Third Party claims, suits, actions, demands or judgments (a "**Third Party Claim**") relating to (a) any breach by Merck of its representations, warranties or covenants made in this Agreement, (b) the gross negligence or willful misconduct of Merck, its Affiliates or their respective officers, directors, agents or employees, in performing any obligations under this Agreement or (c) the Development, Manufacture or Commercialization of any Compound or Product by or on behalf of Merck or Related Parties; except, in each case, to the extent such Liabilities result from a breach of this Agreement by NewLink or the negligence or willful misconduct of NewLink or other NewLink Indemnitees, or to the extent NewLink has an obligation to indemnify Merck Indemnitees under Section 9.1.2(a), (b), (c), (d) or (e).

9.1.2 **NewLink**. NewLink shall indemnify, defend and hold Merck and its Affiliates and their respective directors, officers, employees, agents and their respective successors, heirs and assigns (the "**Merck Indemnitees**") harmless from and against any Liabilities arising, directly or indirectly out of or in connection with Third Party Claims relating to (a) any breach by NewLink of its representations, warranties or covenants made in this Agreement, (b) the gross negligence or willful misconduct of NewLink, its Affiliates or their respective officers, directors, agents or employees, in performing any obligations under this Agreement, (c) the Development or Manufacture of any Compound or Product prior to the Effective Date, (d) any breach by NewLink of the NewLink Third Party Agreements; or (e) the Development, Manufacture or Commercialization of any Terminated Product; except, in each case, to the extent such Liabilities result from a breach of this Agreement by Merck, or the negligence or willful misconduct of Merck or other Merck Indemnitees, or to the extent Merck has an obligation to indemnify NewLink Indemnitees under Section 9.1.1(a) or (b).

9.1.3 **Procedure**. If a Party is seeking indemnification under this Article 9 (the "**Indemnified Party**"), it shall inform the other Party (the "**Indemnifying Party**") of the claim giving rise to the obligation to indemnify pursuant to this Article 9 as soon as reasonably practicable after receiving notice of the claim (provided, however, any delay or failure to provide such notice shall not constitute a waiver or release of, or otherwise limit, the Indemnified Party's rights to indemnification under this Article 9, except to the extent that such delay or failure materially prejudices the Indemnifying Party's ability to defend against the

relevant claims). The Indemnifying Party shall have the right to assume the defense of any such claim for which it is obligated to indemnify the Indemnified Party. The Indemnified Party shall cooperate with the Indemnifying Party and the Indemnifying Party's insurer as the Indemnifying Party may reasonably request, and at the Indemnifying Party's cost and expense. The Indemnified Party shall have the right to participate, at its own expense and with counsel of its choice, in the defense of any claim or suit that has been assumed by the Indemnifying Party. The Indemnifying Party shall not settle any claim without the prior written consent of the Indemnified Party, not to be unreasonably withheld. The Indemnified Party shall not settle or compromise any such claim without the prior written consent of the Indemnifying Party, which it may provide in its sole discretion. If the Parties cannot agree as to the application of Section 9.1.1 or 9.1.2 to any claim, pending resolution of the dispute pursuant to Section 10.6, the Parties may conduct separate defenses of such claims, with each Party retaining the right to claim indemnification from the other Party in accordance with Section 9.1.1 or 9.1.2 upon resolution of the underlying claim.

9.1.4 **Insurance.** Each Party shall procure and maintain insurance, including product liability insurance (or self-insure), adequate to cover its obligations hereunder and which is consistent with normal business practices of prudent companies similarly situated at all times. It is understood that such insurance shall not be construed to create a limit of either Party's liability with respect to its indemnification obligations under this Section 9.1 or otherwise. Each Party shall provide the other Party with written evidence of such insurance upon request. Each Party shall provide the other Party with written notice at least [\*\*] prior to the cancellation, non renewal or material change in such insurance or self insurance which materially adversely affects the rights of the other Party hereunder. Notwithstanding the foregoing, the foregoing provisions shall not apply to Merck if Merck self-insures.

9.2 **Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES (INCLUDING LOST PROFITS OR LOST REVENUES) ARISING FROM OR RELATING TO THIS AGREEMENT (INCLUDING BREACH OF THIS AGREEMENT) OR THE EXERCISE OF ITS RIGHTS HEREUNDER, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION 9.2 IS INTENDED TO OR SHALL LIMIT OR RESTRICT (1) THE INDEMNIFICATION

RIGHTS OR OBLIGATIONS OF ANY PARTY UNDER SECTION 9.1.1, 9.1.2 OR 2.9.4 IN CONNECTION WITH ANY THIRD PARTY CLAIMS, OR (2) DAMAGES AVAILABLE FOR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER ARTICLE 4.

## ARTICLE 10 MISCELLANEOUS

**10.1 Force Majeure.** Neither Party shall be held liable to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in performing any obligation under this Agreement to the extent such failure or delay is caused by or results from causes beyond the reasonable control of the affected Party, including embargoes, war, acts of war (whether war be declared or not), acts of terrorism, insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, fire, floods, or other acts of God, or acts, omissions or delays in acting by any governmental authority or the other Party. The affected Party shall notify the other Party of such force majeure circumstances as soon as reasonably practical, and shall promptly undertake all reasonable efforts necessary to cure such force majeure circumstances.

### **10.2 Assignment; Change of Control.**

**10.2.1 Assignment.** Except as provided in this Section 10.2, this Agreement may not be assigned or otherwise transferred, nor may any right or obligation hereunder be assigned or transferred, by either Party without the consent of the other Party; provided, that a Party may, without such consent, assign this Agreement and its rights and obligations hereunder (i) to an Affiliate (provided, however, that a Party assigning to an Affiliate shall remain fully and unconditionally liable and responsible to the non-assigning Party hereto for the performance and observance of all such duties and obligations by such Affiliate), and the assigning Party shall promptly notify the other Party in writing of any such assignment, or (ii) subject to Section 10.2.3, in connection with the transfer or sale of all or substantially all of its assets to which this Agreement relates, or (iii) subject to Section 10.2.3, in connection with a Party's Change of Control (including, with respect to NewLink, any Change of Control of NL); provided that, in connection with any such assignment by NewLink to a Third Party pursuant to the foregoing clauses (ii) or (iii), as applicable, [\*\*]. Any attempted assignment not in accordance with this Section 10.2 shall be void. Any permitted assignee shall assume all assigned obligations of its assignor under this Agreement.

- 10.2.2 **Exceptions to Assignment by NewLink [\*\*]**. Notwithstanding the provisions of Section 10.2.1, neither NewLink nor its Affiliate shall be permitted to assign this Agreement (or its rights and obligations hereunder) [\*\*]. However, [\*\*] pursuant to [\*\*] provided that [\*\*] (a “[\*\*]”). For clarity, such [\*\*] shall thereafter also be [\*\*].
- 10.2.3 **Change of Control of NewLink**. In the event of a Change of Control of NL or NewLink (or in the event of any assignment of this Agreement by NewLink pursuant to clause (ii) of Section 10.2.1), NewLink must notify Merck in writing at least [\*\*] prior to completion of any such Change of Control (to the extent such notification is legally permissible prior to completion of such Change of Control, and if such notification is not legally permissible prior to such Change of Control, then such notification shall be provided to Merck in writing [\*\*] with respect to such Change of Control) or assignment, as applicable, and, where the Third Party counterparty to such Change of Control (or assignment, as applicable) is [\*\*] (a “**Competitor**”), Merck shall have the right, at any time within [\*\*] of receipt of such notice, to elect [\*\*] upon written notice to NewLink: (i) [\*\*]; provided that (a) [\*\*] effective upon such termination and (b) to the extent [\*\*] as part of the [\*\*]; (ii) require NewLink, including its acquiring party, to adopt reasonable procedures to be agreed upon in writing with Merck, such agreement not to be unreasonably withheld, to prevent the disclosure of all Confidential Information of Merck and its Affiliates and other information with respect to the Development, Manufacturing and Commercialization of Compounds or Products (the “**Sensitive Information**”) beyond [\*\*] or, where [\*\*] in order for [\*\*] hereunder and that [\*\*], and to control the dissemination of Sensitive Information disclosed after the NewLink Change of Control, which procedures shall include reasonable restrictions on the scope of any Sensitive Information to be provided by Merck; (iii) [\*\*]; (iv) [\*\*] hereunder to [\*\*] as is necessary for NewLink to [\*\*]; and/or (v) request NewLink (or its Affiliate, as applicable) to [\*\*], and in such case, [\*\*], to the extent legally permitted, [\*\*]. No Patent Rights, Know-How or other intellectual property rights owned or otherwise controlled by the Third Party acquiror (or any Affiliates of such Third Party prior to such Change of Control, but excluding, for clarity, NewLink and Affiliates of NewLink prior to such Change of Control) acquiring NewLink or NL pursuant to a Change of Control shall be included in the rights licensed hereunder or otherwise subject to this Agreement; provided that, for clarity, all Patent Rights, Know-How and other intellectual property licensed to Merck hereunder prior to such Change of Control

(or otherwise coming under the Control of NewLink (or any of its Affiliates that were Affiliates prior to such Change of Control) following such Change of Control) shall, in all cases, continue to be licensed to Merck hereunder.

**10.3 Severability.** If any one or more of the provisions contained in this Agreement is held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, unless the absence of the invalidated provision(s) adversely affects the substantive rights of the Parties. The Parties shall in such an instance use their best efforts to replace the invalid, illegal or unenforceable provision(s) with valid, legal and enforceable provision(s) which, insofar as practical, implement the purposes of this Agreement.

**10.4 Notices.** All notices which are required or permitted hereunder shall be in writing and sufficient if delivered personally, sent by facsimile (and promptly confirmed by personal delivery, registered or certified mail or overnight courier), sent by nationally-recognized overnight courier or sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

if to NewLink, to: BioProtection Systems Corporation  
C/O NewLink Genetics Corporation  
2503 South Loop Drive  
Suite 5100  
Ames, IA 50010  
Attention: Chief Financial Officer  
Facsimile No. [\*\*]

and NewLink Genetics Corporation  
2503 South Loop Drive  
Suite 5100  
Ames, IA 50010  
Attn: Chief Financial Officer  
Facsimile No. [\*\*]

with a copy to: Cooley LLP  
One Freedom Square  
Reston Town Center  
11951 Freedom Drive  
Reston, VA 20190-5656  
Attn: Kenneth J. Krisko  
Fax: [\*\*]

if to Merck, to: Merck Sharp & Dohme Corp.  
One Merck Drive  
P.O. Box 100, WS3A-65  
Whitehouse Station, NJ 08889-0100  
Attention: Office of Secretary  
Facsimile No.: [\*\*]

and Merck Sharp & Dohme Corp.  
One Merck Drive  
P.O. Box 100  
Whitehouse Station, NJ 08889-0100  
Attention: Vice-President, Business Development and  
Licensing, Merck Research Laboratories  
Facsimile No.: [\*\*]

or to such other address(es) as the Party to whom notice is to be given may have furnished to the other Party in writing in accordance herewith. Any such notice shall be deemed to have been given (a) when delivered if personally delivered or sent by facsimile on a business day (or if delivered or sent on a non-business day, then on the next business day), (b) on the business day after dispatch if sent by nationally-recognized overnight courier, or (c) on the [\*\*] day following the date of mailing, if sent by mail. To the extent practicable, the Party delivering a notice shall also send a copy of such notice to the Project Leader of other the Party.

**10.5 Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York and the patent laws of the United States without reference to any rules of conflict of laws or renvoi.

**10.6 Dispute Resolution.**

10.6.1 The Parties shall negotiate in good faith and use reasonable efforts to settle any dispute, controversy or claim arising from or related to this Agreement or the breach thereof. If the Parties do not fully settle, and a Party wishes to pursue the matter, each such dispute, controversy or claim that is not an “**Excluded Claim**” shall be finally resolved by binding arbitration in accordance with the Commercial Arbitration Rules and Supplementary Procedures for Large Complex Disputes of the American Arbitration Association (“**AAA**”), and judgment on the arbitration award may be entered in any court having jurisdiction thereof.

10.6.2 The arbitration shall be conducted by a panel of three persons experienced in the pharmaceutical business: within [\*\*] after initiation of arbitration, each Party shall select one person to act as arbitrator and the two Party-selected arbitrators shall select a third arbitrator within [\*\*] of their appointment. If the arbitrators selected by the Parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be appointed by the AAA. The place of arbitration shall be New York, New York. All proceedings and communications shall be in English.

10.6.3 Either Party may apply to the arbitrators for interim injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either Party also may, without waiving any remedy under this Agreement, seek from any court having jurisdiction any injunctive or provisional relief necessary to protect the rights or property of that Party pending the arbitration award. The arbitrators shall have no authority to award punitive or any other type of damages not measured by a Party’s compensatory damages. Each Party shall bear its own

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costs and expenses and attorneys' fees and an equal share of the arbitrators' fees and any administrative fees of arbitration.

10.6.4 Except to the extent necessary to confirm an award or as may be required by law, neither a Party nor an arbitrator may disclose the existence, content, or results of an arbitration without the prior written consent of both Parties. In no event shall an arbitration be initiated after the date when commencement of a legal or equitable proceeding based on the dispute, controversy or claim would be barred by the applicable New York law statute of limitations.

10.6.5 The Parties agree that, in the event of a dispute over the nature or quality of performance under this Agreement, neither Party may terminate this Agreement until final resolution of the dispute through arbitration or other judicial determination. The Parties further agree that any payments made pursuant to this Agreement pending resolution of the dispute shall be refunded if an arbitrator or court determines that such payments are not due.

10.6.6 As used in this Section, the term "**Excluded Claim**" means a dispute, controversy or claim that concerns (a) the validity or infringement of a patent, trademark or copyright, or (b) any antitrust, anti-monopoly or competition law or regulation, whether or not statutory.

10.7 **Headings.** The captions to the several Articles, Sections and subsections hereof are not a part of this Agreement, but are merely for convenience to assist in locating and reading the several Articles and Sections hereof.

10.8 **Independent Contractors.** It is expressly agreed that NewLink and Merck shall be independent contractors and that the relationship between the two Parties shall not constitute a partnership, joint venture or agency. Neither NewLink nor Merck shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other Party, without the prior written consent of the other Party.

10.9 **Waiver.** The waiver by either Party hereto of any right hereunder, or of any failure of the other Party to perform, or of any breach by the other Party, shall not be deemed a waiver of any other right hereunder or of any other breach by or failure of such other Party whether of a similar nature or otherwise.

10.10 **Cumulative Remedies.** No remedy referred to in this Agreement is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to in this Agreement or otherwise available under law.

10.11 **Waiver of Rule of Construction.** Each Party has had the opportunity to consult with counsel in connection with the review, drafting and negotiation of this Agreement. Accordingly, the rule of construction that any ambiguity in this Agreement shall be construed against the drafting Party shall not apply.

10.12 **Certain Conventions.** Any reference in this Agreement to an Article, Section, subsection, paragraph, clause, Attachment or Exhibit shall be deemed to be a reference to an Article, Section, subsection, paragraph, clause, Attachment or Exhibit, of or to, as the case may be, this Agreement, unless otherwise indicated. Unless the context of this Agreement otherwise requires, (a) words of any gender include each other gender, (b) words such as “herein”, “hereof”, “hereunder” and derivative or similar words refer to this Agreement, including the Attachments, as a whole and not merely to the particular provision in which such words appear, (c) words using the singular shall include the plural, and vice versa, (d) the words “include” or “including” shall be construed as incorporating, also, “but not limited to” or “without limitation”, (e) the word “or” shall not be construed as exclusive, (f) the word “law” or “laws” means any applicable, legally binding statute, ordinance, resolution, regulation, code, guideline, rule, order, decree, judgment, injunction, mandate or other legally binding requirement of a governmental authority (including a court, tribunal, agency, legislative body or other instrumentality of any (i) government or country or territory, (ii) any state, province, county, city or other political subdivision thereof, or (iii) any supranational body) and (g) references to any Articles or Sections include Sections and subsections that are part of the reference Article or section (e.g., a section numbered “Section 2.2.1” would be part of “Section 2.2.”, and references to “Article 2” or “Section 2.2.” would refer to material contained in the subsection described as “Section 2.2.2”). In addition, any payment which is deemed to be non-creditable or non-refundable shall not in any way limit Merck’s right to indemnification under this Agreement or to otherwise recover damages for breach of this Agreement.

10.13 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In addition, this Agreement may be executed by facsimile or “PDF” and such facsimile or “PDF” signature shall be deemed to be an original.

- 10.14 **Entire Agreement; Amendments. This Agreement, together with the Schedules and** other attachments hereto, contains the entire understanding of the Parties with respect to the Transition Program and the licenses and rights granted hereunder. Any other express or implied agreements and understandings, negotiations, writings and commitments, either oral or written, in respect to the subject matter of this Agreement, including the Transition Program and the licenses and rights granted hereunder, are superseded by the terms of this Agreement. The Schedules and other attachments to this Agreement are incorporated herein by reference and shall be deemed a part of this Agreement. This Agreement may be amended, or any term hereof modified, only by a written instrument duly executed by authorized representative(s) of both Parties hereto.
- 10.15 **Further Actions.** Each Party will execute, acknowledge and deliver such further instruments, and to do all such other ministerial, administrative or similar acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.
- 10.16 **No Third Party Rights.** The provisions of this Agreement are for the exclusive benefit of the Parties, and no other person or entity shall have any right or claim against any Party by reason of these provisions or be entitled to enforce any of these provisions against any Party.
- 10.17 **Expenses.** Except as otherwise specifically provided in this Agreement, each Party (and its Affiliates) shall bear its own costs and expenses in connection with entering into this Agreement and the consummation of the transactions and performance of its obligations contemplated hereby.
- 10.18 **Extension to Affiliates.** Merck shall have the right to extend the rights, licenses, immunities and obligations granted in this Agreement to one or more of its Affiliates. All applicable terms and provisions of this Agreement shall apply to any such Affiliate to which this Agreement has been extended to the same extent as such terms and provisions apply to Merck. Merck shall remain fully liable for any acts or omissions of such Affiliates.
- 10.19 **Parent Guarantee.** This Agreement provides for the performance by NewLink, an Affiliate of NL. NL hereby unconditionally and irrevocably guarantees, and shall be fully liable for, the prompt and complete performance (including any amounts payable hereunder) of this Agreement, as may be amended from time to time, by NewLink. The performance guaranty described in this Section 10.19 shall be effective [\*\*] as to which [\*\*]. NL's obligations are [\*\*] of any [\*\*] and it shall not be necessary for [\*\*] as a

condition to the [\*\*]. NL, hereby [\*\*] to [\*\*] that any other [\*\*] and expressly [\*\*] that it may have [\*\*].

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**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date.

**MERCK SHARP & DOHME CORP.**

**NEWLINK GENETICS CORPORATION**

By: \_\_\_\_\_  
/s/ Rita A. Karachun

By: /s/ Charles J. Link Jr., MD

Name: \_\_\_\_\_  
Rita A. Karachun

Name: \_\_\_\_\_  
Charles J. Link Jr., MD

Title: \_\_\_\_\_  
President

Title: \_\_\_\_\_  
CEO

**BIOPROTECTION SYSTEMS CORPORATION**

By: \_\_\_\_\_  
/s/ Charles J. Link Jr., MD

Name: \_\_\_\_\_  
Charles J. Link Jr., MD

Title: \_\_\_\_\_

**SIGNATURE PAGE TO LICENSE AND COLLABORATION AGREEMENT**

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**Schedule 1.26**

**Current Compound**

The Current Compound means the following [\*\*]

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**Schedule 1.72**

**NewLink Existing Funding Agreements**

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**Schedule 1.79**  
**NewLink Patent Rights**

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<b>Region or Country</b>	<b>Application Number</b>	<b>Patent Number</b>	<b>Status</b>	<b>Expiration Date</b>	<b>Filing Date</b>	<b>Publication number</b>	<b>Publication date</b>	<b>Registration date</b>
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**Schedule 1.122**

**Transition Plan Outline**

**(See Attached)**

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**Schedule 1.122 – Transition Plan Outline**

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**Schedule 3.1.3**

**Certain Terms of NewLink Canada License Amendment**

**ATTACHMENT 2**

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### **Schedule 3.10**

#### **NewLink Future Funding Agreements**

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**Schedule 4.6**

**Form of Press Release**

**(See Attached)**

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## News Release

**FOR IMMEDIATE RELEASE**

**Merck Media Contacts: Investor Contacts:**

Pam Eisele      NewLink Genetics: Jack Henneman  
(267) 305-3558      (515) 598-2561

Imraan Munshi      Merck: Justin Holko  
(215) 652-0059      (908) 423-5088

### **Merck and NewLink Genetics Enter into Licensing and Collaboration Agreement for Investigational Ebola Vaccine**

#### **Clinical Development, Manufacturing Expertise, and Scale Critical to Success**

WHITEHOUSE STATION, N.J. and AMES, I.A., Nov. XX, 2014 – Merck (NYSE:MRK), known as MSD outside the United States and Canada, and NewLink Genetics Corporation (NASDAQ: NLNK), announced today that they have entered into an exclusive worldwide license agreement to research, develop, manufacture, and distribute NewLink's investigational rVSV-EBOV (Ebola) vaccine candidate.

The vaccine candidate, originally developed by the Public Health Agency of Canada (PHAC), is currently being evaluated in Phase I clinical trials. Pending the results of ongoing Phase I trials in the U.S. National Institutes of Health (NIH) has announced plans to initiate, in early 2015, a large randomized, controlled Phase III study to evaluate the safety and efficacy of the rVSV-EBOV vaccine and another investigational Ebola vaccine co-developed by the National Institute of Allergy and Infectious Diseases (NIAID) and GlaxoSmithKline.

"Effective Ebola vaccines will be a critical component of comprehensive prevention and control measures for people at risk of Ebola virus infection and to stem future outbreaks

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globally," said Dr. Julie Gerberding, president of Merck Vaccines. "Merck is committed to applying our vaccine expertise to address important global health needs and, through our collaboration with NewLink, we hope to advance the public health response to this urgent international health priority."

According to Dr. Charles Link, chairman and chief executive officer of NewLink Genetics, "Merck's vaccine development expertise, commercial leadership and history of successful strategic alliances make it an ideal partner to expedite the development of rVSV-ZEBOV and, if demonstrated to be efficacious and well-tolerated, to make it available to individuals and communities at risk of Ebola virus infection around the world."

Under the terms of the agreement, Merck will be granted the exclusive rights to the rVSV-EBOV vaccine candidate as well as any follow-on products. The vaccine candidate is under an exclusive licensing arrangement with a wholly-owned subsidiary of NewLink Genetics. Under these license arrangements, the PHAC retains non-commercial rights pertaining to the vaccine candidate.

Phase I clinical trials of the rVSV-EBOV vaccine are now underway at the Walter Reed Army Institute of Research and the NIAID at the NIH. Additional Phase I studies are underway or planned to begin in the near future at clinical research centers in Switzerland, Germany, Kenya and Gabon in a World Health Organization-coordinated effort, and in Canada by the Canadian Immunization Research Network.

"This vaccine is the result of years of hard work and innovation by Canadian scientists. We are pleased that this new alliance coupled with the clinical trials currently underway will further strengthen the possibility that the vaccine will make a difference in global response to the Ebola outbreak," said Canada's Minister of Health, Rona Ambrose.

#### **About rVSV Vaccine Platform**

This vaccine platform is based on an attenuated strain of vesicular stomatitis virus that has been modified to express an Ebola virus protein that plays an essential role in establishing virus infection. The rVSV-EBOV vaccine was created by scientists at the Public Health Agency of Canada's National Microbiology Laboratory. A significant portion of the funding for the further development of the vaccine came from the CBRN Research and Technology Initiative, a federal program led by Defence Research and Development Canada. In 2010, PHAC signed a licensing arrangement with BioProtection Systems (BPS), a wholly-owned subsidiary of NewLink

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Genetics, as the sole licensee for these vaccines and the underlying technology. BPS has worked with the PHAC to produce clinical trial materials and to move this vaccine candidate into Phase I studies.

### **About Merck**

Today's Merck is a global healthcare leader working to help the world be well. Merck is known as MSD outside the United States and Canada. Through our prescription medicines, vaccines, biologic therapies, and animal health products, we work with customers and operate in more than 140 countries to deliver innovative health solutions. We also demonstrate our commitment to increasing access to healthcare through far-reaching policies, programs and partnerships. For more information, visit [www.merck.com](http://www.merck.com) and connect with us on [Twitter](#), [Facebook](#) and [YouTube](#).

### **About NewLink Genetics Corporation**

NewLink is a biopharmaceutical company focused on discovering, developing and commercializing novel immunology products to improve treatment options for patients with cancer. NewLink's portfolio includes biologic and small molecule immunotherapy product candidates intended to treat a wide range of oncology indications. NewLink's product candidates are designed to harness multiple components of the immune system to combat cancer without significant incremental toxicity, either as a monotherapy or in combination with other treatment regimens. BioProtection Systems, a wholly-owned subsidiary of NewLink Genetics Corporation, is focused on the research, development and commercialization of vaccines. BPS is focused on control of emerging infectious diseases, including improvement of existing vaccines and providing rapid-response prophylactic and therapeutic treatment for pathogens most likely to enter the human population through pandemics or acts of bioterrorism. For more information please visit <http://www.linkp.com>.

### **Merck Forward-Looking Statement**

This news release includes "forward-looking statements" within the meaning of the safe harbor provisions of the United States Private Securities Litigation Reform Act of 1995. These statements are based upon the current beliefs and expectations of Merck's management and are subject to significant risks and uncertainties. There can be no guarantees with respect to

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pipeline products that the products will receive the necessary regulatory approvals or that they will prove to be commercially successful. If underlying assumptions prove inaccurate or risks or uncertainties materialize, actual results may differ materially from those set forth in the forward-looking statements.

Risks and uncertainties include but are not limited to, general industry conditions and competition; general economic factors, including interest rate and currency exchange rate fluctuations; the impact of pharmaceutical industry regulation and health care legislation in the United States and internationally; global trends toward health care cost containment; technological advances, new products and patents attained by competitors; challenges inherent in new product development, including obtaining regulatory approval; Merck's ability to accurately predict future market conditions; manufacturing difficulties or delays; financial instability of international economies and sovereign risk; dependence on the effectiveness of Merck's patents and other protections for innovative products; the exposure to litigation, including patent litigation, and/or regulatory actions.

Merck undertakes no obligation to publicly update any forward-looking statement, whether as a result of new information, future events or otherwise. Additional factors that could cause results to differ materially from those described in the forward-looking statements can be found in Merck's 2013 Annual Report on Form 10-K and the company's other filings with the SEC available at the SEC's Internet site ([www.sec.gov](http://www.sec.gov)).

#### **NewLink Genetics Corporation Forward-Looking Statement**

This press release contains forward-looking statements of NewLink that involve substantial risks and uncertainties. All statements, other than statements of historical facts, contained in this press release are forward-looking statements, within the meaning of The Private Securities Litigation Reform Act of 1995. The words "anticipate," "believe," "estimate," "expect," "intend," "may," "plan," "target," "potential," "will," "could," "should," "seek," or the negative of these terms or other similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. These forward-looking statements include, among others, statements regarding plans to develop and commercialize our product candidates and any other statements other than statements of historical fact. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements that NewLink makes due to a number

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of important factors, including those risks discussed in "Risk Factors" and elsewhere in NewLink's Annual Report on Form 10-K for the period ended December 31, 2013, and subsequent filings with the Securities and Exchange Commission. The forward-looking statements in this press release represent NewLink's views as of the date of this press release. NewLink anticipates that subsequent events and developments will cause its views to change. However, while it may elect to update these forward-looking statements at some point in the future, it specifically disclaims any obligation to do so. You should, therefore, not rely on these forward-looking statements as representing NewLink's views as of any date subsequent to the date of this press release.

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**Schedule 5.4.9**

**NewLink Wire Instructions**

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Account Name: [\*\*]

Account Number: [\*\*]

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**Schedule 6.2.12**

**Third Party Clinical Studies**

<b>Trial Site</b>	<b>Principal Investigator</b>	<b>Initiated (projected)*</b>	<b>Projected # volunteers</b>	<b>Sponsor</b>	<b>IND #</b>
[**]	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	[**]	[**]
[**]	[**]	[**]	[**]	[**]	[**]
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**Schedule 6.2.21**

**Product Materials**

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**Schedule 6.2.26**

**NewLink Affiliates**

**NewLink International**

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## SUBSIDIARIES OF NEWLINK GENETICS CORPORATION

<b>Subsidiary</b>	<b>Jurisdiction of Incorporation</b>
BioProtection Systems Corporation	Delaware
NewLink International	Cayman Islands
BlueLink Pharmaceuticals, Inc.	Delaware

**Consent of Independent Registered Public Accounting Firm**

The Board of Directors  
NewLink Genetics Corporation and subsidiaries:

We consent to the incorporation by reference in the registration statement on Form S-3 (No. 333-226366) and Form S-8 (No. 333-178032, No. 333-184880, No. 333-186020, No. 333-203350, No. 333-234644) of NewLink Genetics Corporation of our report dated March 3, 2020, with respect to the consolidated balance sheets of NewLink Genetics Corporation as of December 31, 2019 and 2018, the related consolidated statements of operations, equity, and cash flows for each of the years in the three-year period ended December 31, 2019, and the related notes, which report appears in the December 31, 2019 annual report on Form 10-K of NewLink Genetics Corporation.

/s/ KPMG LLP

Des Moines, Iowa  
March 3, 2020



## CERTIFICATION

I, Carl W. Langren certify that:

1. I have reviewed this annual report on Form 10-K of NewLink Genetics Corporation;
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 3, 2020

By: /s/ Carl W. Langren  
Carl W. Langren  
Chief Financial Officer  
(Principal Financial Officer)

