

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

**FORM 8-K
CURRENT REPORT**

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

Date of report (Date of earliest event reported): **February 27, 2020**

Verastem, Inc.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-35403
(Commission
File Number)

27-3269467
(IRS Employer
Identification No.)

117 Kendrick Street, Suite 500, Needham, MA
(Address of Principal Executive Offices)

02494
(Zip Code)

Registrant's telephone number, including area code: **(781) 292-4200**

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

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

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

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

| <u>Title of each class</u> | <u>Trading Symbol(s)</u> | <u>Name of each exchange on which registered</u> |
|--|------------------------------|--|
| Common stock, \$0.0001 par value per share | VSTM | The Nasdaq Global Market |

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

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.

On February 27, 2020, Verastem, Inc. (the “Company”) entered into a Securities Purchase Agreement (the “Purchase Agreement”) with certain purchasers identified on the signature pages thereto (the “Purchasers”), pursuant to which the Company agreed to sell and issue to the Purchasers, in a private placement, shares of common stock, par value \$0.0001 per share (the “Common Stock”).

The closing is anticipated to occur on March 3, 2020 (the “Closing”), subject to the satisfaction of customary closing conditions. The Company agreed to sell and issue 46,511,628 shares of Common Stock at a purchase price of \$2.15 per share (the “Shares”) for aggregate gross proceeds to the Company of approximately \$100 million, before deducting fees to the placement agents and other estimated offering expenses payable by the Company. The Company will file a resale registration statement with the Securities and Exchange Commission (the “SEC”) as soon as practicable, and in all events within 30 days after the Closing, to register the resale of the Shares. Jefferies LLC is acting as sole lead placement agent for the offering and H.C. Wainwright & Co. is acting as a placement agent for the offering. As set forth in the Purchase Agreement, if the Company fails to comply with certain obligations with respect to filing of such registration statement, the Company would be obligated to pay liquidated damages to the Purchasers in the amount of 1% of each Purchaser’s aggregate investment.

The foregoing summaries of the offering, the Shares and the Purchase Agreement do not purport to be complete and are qualified in their entirety by reference to the form of the Purchase Agreement, which is filed as exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 2.02 Results of Operations and Financial Condition.

On February 28, 2020, the Company issued a press release providing approximate net product revenue results of \$3.6 million for the fiscal 2019 fourth quarter, compared to \$4.0 million for the third quarter of 2019, and \$12.3 million for the full fiscal year ended December 31, 2019. Based on information currently available, management estimates the Company’s cash and short-term investments as of December 31, 2019 to have been \$111.3 million.

The Company’s actual results may differ from these estimates due to the completion of the Company’s closing procedures with respect to the fiscal year ended December 31, 2019, final adjustments and other developments that may arise between now and the time the financial results for the fiscal year are finalized. A full text of the press release issued in connection with the announcement is furnished as Exhibit 99.2 to this Current Report on Form 8-K and is incorporated by reference into this Item 2.02.

This information contained in this Current Report on Form 8-K, including Exhibit 99.2 attached hereto, is being furnished and shall not be deemed filed for any purpose, and shall not be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, except as expressly set forth by specific reference in such filing.

Item 2.05 Costs Associated with Exit or Disposal Activities

On February 27, 2020, the Company committed to an operational plan to reduce overall operating expenses, including the elimination of approximately 31 positions across the Company and other cost-saving measures (the “Restructuring”). The Restructuring is designed to streamline operations, speed execution of the Company’s clinical development of defactinib and CH5126766, and reflect a focused, account-based approach in the field. The Company expects to substantially complete the workforce reduction by the end of the first quarter of 2020.

The Company expects the Restructuring to reduce annualized operating expenses to a range of approximately \$70 million to \$85 million beginning in the first quarter of 2020. The Company has offered one-time termination benefits to the affected employees, including cash severance payments, healthcare benefits, and outplacement assistance.

The Company expects to record a charge of approximately \$1.9 million in the first quarter of 2020 as a result of the Restructuring, consisting of one-time termination benefits for employee severance, benefits, and related costs, all of which are expected to result in cash expenditures and substantially all of which will be paid out over the next three months. The Company’s estimates are based on a number of assumptions. Actual results may differ materially, and additional charges not currently expected may be incurred in connection with, or as a result of, the Restructuring.

Item 3.02 Unregistered Sales of Equity Securities.

To the extent required by Item 3.02 of Form 8-K, the information regarding the Shares set forth under Item 1.01 of this Form 8-K is incorporated by reference in this Item 3.02. The Company will issue the Shares in reliance on the exemption from registration provided for under Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), and Rule 506 of Regulation FD thereunder. The Company relied on this exemption from registration for private placements based in part on the representations made by the Purchasers, including the representations with respect to each Purchaser's status as an accredited investor, as such term is defined in Rule 501(a) of the Securities Act, and each Purchaser's investment intent. The offer and sale of the Shares have not been registered under the Securities Act.

Item 7.01 Other Events.

On February 28, 2020, the Company issued press releases announcing the offering described and the Restructuring described above. Copies of the press releases are attached hereto as Exhibits 99.1 and 99.2, respectively. The information in this report, including Exhibits 99.1 and 99.2, is being furnished pursuant to Item 7.01 and shall not be deemed filed for purposes of Section 18 of the Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that section, nor will it be incorporated by reference in any filing under the Securities Act or in any filing under the Exchange Act, except as expressly set forth by specific reference in such filing.

Note Regarding Forward-Looking Statements

This Current Report on Form 8-K includes forward-looking statements about the Company's strategy, future plans and prospects, and financial results. The words "anticipate," "believe," "estimate," "expect," "intend," "may," "plan," "predict," "project," "target," "potential," "will," "would," "could," "should," "continue," and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. Each forward-looking statement is subject to risks and uncertainties that could cause actual results to differ materially from those expressed or implied in such statement.

These risks and uncertainties include: the Company's ability to complete the Restructuring within the anticipated timeline; the impact of the workforce reduction on the Company's business; and unanticipated charges not currently contemplated that may occur as a result of the Restructuring. Other risks and uncertainties include those identified under the heading "Risk Factors" in the Company's Quarterly Report on Form 10-Q for the quarterly periods ended September 30, 2019, as filed with the Securities and Exchange Commission ("SEC") on October 30, 2019, and June 30, 2019, as filed with the SEC on August 1, 2019, its Annual Report on Form 10-K for the year ended December 31, 2018 as filed with the SEC on March 12, 2019 and in any subsequent filings with the SEC. The forward-looking statements contained in this Current Report on Form 8-K reflect the Company's views as of the date hereof, and the Company does not assume and specifically disclaims any obligation to update any forward-looking statements whether as a result of new information, future events or otherwise, except as required by law.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|--|
| 10.1 | Purchase Agreement, dated as of February 27, 2020, among Verastem, Inc. and each purchaser party thereto |
| 99.1 | Press Release, dated February 28, 2020, regarding the offering |
| 99.2 | Press Release, dated February 28, 2020, regarding the restructuring |

SIGNATURES

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

Verastem, Inc.

Dated: February 28, 2020

By: /s/ Brian M. Stuglik
Brian M. Stuglik
Chief Executive Officer

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this “**Agreement**”) is dated as of February 27, 2020 (the “**Effective Date**”), among Verastem, Inc., a Delaware corporation (the “**Company**”), and each purchaser identified on the signature pages hereto (each a “**Purchaser**” and collectively the “**Purchasers**”).

WHEREAS, the Company and the Purchasers are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the “**Securities Act**”), and Rule 506 of Regulation D as promulgated by the United States Securities and Exchange Commission (the “**Commission**”) under the Securities Act.

WHEREAS, each Purchaser wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, that aggregate number of shares of Common Stock (the “**Shares**”) which aggregate amount for all Purchasers together shall be 46,511,628 shares of Common Stock .

WHEREAS, in connection with the offering and sale of the Shares, the Company has entered into an engagement letter dated November 4, 2019, as amended on February 7, 2020 (as amended, the “**Engagement Letter**”), with Jefferies, LLC (the “**Lead Placement Agent**”) and H.C.Wainwright & Co. and Cantor Fitzgerald & Co. (collectively with the Lead Placement Agent, the “**Placement Agents**”).

Now, Therefore, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Company and each Purchaser, severally and not jointly, agree as follows:

1. DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms have the meanings set forth in this **Section 1.1**:

“**Closing**” means the closing of the purchase and sale of the Shares on the Closing Date pursuant to **Section 2.1** of this Agreement.

“**Closing Date**” means March 3, 2020.

“**Closing Price**” means \$2.15 per share.

“**Common Stock**” means the common stock of the Company, \$0.0001 par value per share, and any other class of securities into which such securities may hereafter be reclassified or changed into.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**GAAP**” means U.S. generally accepted accounting principles consistently applied.

“**Investment Company Act**” means the Investment Company Act of 1940, as amended.

“**Material Adverse Effect**” means a circumstance that (i) could reasonably be expected to have a material adverse effect on the performance of this Agreement or the consummation of any of the transactions contemplated hereby or (ii) could reasonably be expected to have a material adverse effect on the condition (financial or otherwise), prospects, earnings, business or properties of the Company and the Subsidiaries (as defined below) taken as a whole.

“**Nasdaq**” means The Nasdaq Global Market.

“**Registration Statement**” means a registration statement or registration statements of the Company filed under the Securities Act pursuant to **Section 4** hereof.

“**Rule 144**” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“**SEC Reports**” means collectively all reports, schedules, forms, statements and other documents required to be filed by the Company under the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, since January 1, 2018 (including the exhibits thereto and documents incorporated by reference therein).

“**Short Sales**” means all “short sales” as defined in Rule 200 of Regulation SHO of the Exchange Act, but shall be deemed to not include the location and/or reservation of borrowable shares of Common Stock.

“**Trading Day**” means a day on which the Common Stock is traded on Nasdaq.

“**Transaction Documents**” means this Agreement, and any other documents or agreements executed and delivered to the Purchasers in connection with the transactions contemplated hereunder.

2. PURCHASE AND SALE

2.1 Closing.

(a) At the Closing, upon the terms set forth herein, the Company hereby agrees to issue and sell to each Purchaser, and each Purchaser agrees to purchase from the Company, severally and not jointly, the number of Shares set forth opposite such Purchaser’s name on **Exhibit A** hereto, at a purchase price equal to the Closing Price per share of Common Stock.

(b) At the Closing, each Purchaser shall deliver to the Company via wire transfer immediately available funds equal to the purchase price set forth opposite such Purchaser’s name on **Exhibit A** hereto and the Company shall deliver to each Purchaser its respective Shares in the amount set forth opposite such Purchaser’s name on Exhibit A hereto, deliverable at the Closing on the Closing Date, in accordance with **Section 2.2** of this Agreement. The Closing shall occur at 10:00 a.m. (New York City Time) on the Closing Date or such other time and location as the parties shall mutually agree.

2.2 Deliveries; Closing Conditions.

(a) At the Closing, the Company will deliver or cause to be delivered to each Purchaser certificate(s) or book-entry shares representing the Common Stock, purchased by such Purchaser, registered in such Purchaser's name. Such delivery shall be against payment of the purchase price therefor by such Purchaser by wire transfer of immediately available funds to the Company in accordance with the Company's written wiring instructions.

(b) The respective obligations of the Company, on the one hand, and each Purchaser, on the other hand, hereunder in connection with the Closing are subject to the following conditions being met:

(i) the accuracy in all material respects on the Closing Date of the representations and warranties contained herein (unless made as of a specified date therein) of the Company (with respect to the obligations of the Purchasers) and the Purchasers (with respect to the obligations of the Company);

(ii) all obligations, covenants and agreements of the Company (with respect to the obligations of the Purchasers) and the Purchasers (with respect to the obligations of the Company) required to be performed at or prior to the Closing Date shall have been performed in all material respects;

(iii) The Purchasers shall have received a certificate of the Secretary of the Company (a "*Secretary's Certificate*"), dated as of the Closing Date in form and substance reasonably satisfactory to the Purchasers;

(iv) The Purchasers shall have received a certificate signed by the Chief Executive Officer of the Company (an "*Officer's Certificate*"), dated as of the Closing Date in form and substance reasonably satisfactory to the Purchasers;

(v) The Purchasers shall have received an opinion of Ropes & Gray LLP, counsel for the Company ("*Company Counsel*"), dated as of the Closing Date, in a form reasonably satisfactory to the Purchasers; and

(vi) No Material Adverse Effect has occurred.

3. REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. Assuming the accuracy of the representations and warranties of the Purchasers set forth in **Section 3.2** of this Agreement and except as set forth in the SEC Reports, which disclosures serve to qualify these representations and warranties in their entirety, the Company represents and warrants to the Purchasers and the Placement Agents that the statements contained in this **Section 3.1** are true and correct as of the date hereof and as of the Closing Date:

(a) The Company was not and is not an Ineligible Issuer (as defined in Rule 405 under the Securities Act), without taking account of any determination by the Commission pursuant to Rule 405 that it is not necessary that the Company be considered an Ineligible Issuer.

(b) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware, with full corporate power and authority to own, lease and operate its properties and conduct its business, to execute and deliver this Agreement and to issue, sell and deliver the Shares as contemplated herein.

(c) The Company is duly qualified to do business as a foreign corporation and is in good standing in the Commonwealth of Massachusetts, which is the only jurisdiction where the ownership or leasing of its properties or the conduct of its business requires such qualification, except where the failure to be so qualified and in good standing would not, individually or in the aggregate, have a Material Adverse Effect.

(d) The authorized capital stock of the Company consists of 200,000,000 shares of common stock and 5,000,000 shares of undesignated Preferred Stock. As of the Effective Date, there are no shares of Preferred Stock issued and outstanding and there are 91,402,823 shares of Common Stock issued and outstanding, of which no shares are owned by the Company. There are no other shares of any other class or series of capital stock of the Company issued or outstanding.

(e) The Company has no subsidiaries (as defined under the Securities Act) other than Verastem Securities Company and Verastem Europe GmbH (each a “Subsidiary” and together, the “Subsidiaries”); the Company owns all of the issued and outstanding capital stock and ownership interests of the Subsidiaries; other than the capital stock and ownership interests of the Subsidiaries, the Company does not own, directly or indirectly, any shares of stock or any other equity interests or long-term debt securities of any corporation, firm, partnership, joint venture, association or other entity; complete and correct copies of the charters, bylaws and operating agreements of the Company and the Subsidiaries and all amendments thereto have been made available to you, and no changes therein will be made on or after the date hereof through and including the Closing Date; Verastem Securities Company and Verastem Europe GmbH have been duly incorporated and are validly existing as a corporation and a Gelleschaft mit beschränkter Haftung in good standing under the laws of the Commonwealth of Massachusetts and the laws of the Federal Republic of Germany, respectively, with full corporate power and authority to own, lease and operate its properties and to conduct its business; each Subsidiary is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where the ownership or leasing of its properties or the conduct of its business requires such qualification, except where the failure to be so qualified and in good standing would not, individually or in the aggregate, have a Material Adverse Effect; all of the outstanding shares of capital stock and ownership interests of the Subsidiaries have been duly authorized and validly issued, are fully paid and non-assessable, have been issued in compliance with all applicable securities laws, were not issued in violation of any preemptive right, resale right, right of first refusal or similar right and are owned by the Company subject to no security interest, other encumbrance or adverse claims; and no options, warrants or other rights to purchase, agreements or other obligations to issue or other rights to convert any obligation into shares of capital stock or ownership interests in the Subsidiaries are outstanding.

(f) The Shares have been duly and validly authorized and, when issued and delivered against payment therefor as provided herein, will be duly and validly issued, fully paid and non-assessable and free of statutory and contractual preemptive rights, rights of first refusal and similar rights; the Shares, when issued and delivered against payment therefor as provided

herein, will be free of any restriction upon the voting thereof pursuant to the Delaware General Corporation Law or the Company's charter or bylaws or any agreement or other instrument to which the Company is a party.

(g) This Agreement has been duly authorized, executed and delivered by the Company and constitutes the lawful, valid and legally binding obligation of the Company, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the rights of creditors generally and general equitable principles.

(h) Neither the Company nor any of its Subsidiaries is in breach or violation of or in default under (nor has any event occurred which, with notice, lapse of time or both, would result in any breach or violation of, constitute a default under or give the holder of any indebtedness (or a person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a part of such indebtedness under) (A) its respective charter or bylaws, or (B) any indenture, mortgage, deed of trust, bank loan or credit agreement or other evidence of indebtedness, or any license, lease, contract or other agreement or instrument to which it is a party or by which it or any of its properties may be bound or affected, or (C) any applicable federal, state, local or foreign law, regulation or rule, or (D) any applicable rule or regulation of any self-regulatory organization or other non-governmental regulatory authority (including, without limitation, the rules and regulations of Nasdaq), or (E) any decree, judgment or order applicable to it or any of its properties, except, in the case of the foregoing clauses (B), (C), (D) and (E), for any such breach, violation, default or event that would not, individually or in the aggregate, have a Material Adverse Effect.

(i) Neither the Company nor any of its Subsidiaries is and, after giving effect to the offering and sale of the Shares and the application of the proceeds thereof as described in Section 5.4 of this Agreement, neither of them will be, an "investment company" or an entity "controlled" by an "investment company," as such terms are defined in the Investment Company Act.

(j) The execution, delivery and performance of this Agreement, the issuance and sale of the Shares and the consummation of the transactions contemplated hereby will not conflict with, result in any breach or violation of or constitute a default under (nor constitute any event which, with notice, lapse of time or both, would result in any breach or violation of, constitute a default under or give the holder of any indebtedness (or a person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a part of such indebtedness under) (or result in the creation or imposition of a lien, charge or encumbrance on any property or assets of the Company or its Subsidiaries pursuant to) (A) the charter or bylaws of the Company or its Subsidiaries, or (B) any indenture, mortgage, deed of trust, bank loan or credit agreement or other evidence of indebtedness, or any license, lease, contract or other agreement or instrument to which the Company or its Subsidiaries is a party or by which either of them or any of their respective properties may be bound or affected, or (C) any applicable federal, state, local or foreign law, regulation or rule, or (D) any applicable rule or regulation of any self-regulatory organization or other non-governmental regulatory authority (including, without limitation, the rules and regulations of Nasdaq), or (E) any decree, judgment or order applicable to the Company or its Subsidiaries or any of their respective properties, except, in the case of the

foregoing clauses (B), (C), (D) and (E), for any such conflict, breach, violation, default or event that would not, individually or in the aggregate, have a Material Adverse Effect.

(k) No approval, authorization, consent or order of or filing with any federal, state, local or foreign governmental or regulatory commission, board, body, authority or agency, or of or with any self-regulatory organization or other non-governmental regulatory authority (including, without limitation, Nasdaq) having jurisdiction over the Company, or approval of the stockholders of the Company or any other person or entity, is required in connection with the issuance and sale of the Shares or the consummation by the Company of the transactions contemplated hereby, other than (i) any necessary qualification under the securities or blue sky laws of the various jurisdictions in which the Shares are being offered, (ii) any listing applications and related consents or any notices required by Nasdaq in the ordinary course of the offering of the Shares, (iii) filings with the Commission under the Securities Act contemplated by this Agreement or (iv) filings with the Commission on Form 8-K with respect to this Agreement.

(l) (i) No person has any preemptive rights, resale rights, rights of first refusal or other rights to purchase any shares of Common Stock or shares of any other capital stock of or other equity interests in the Company and (ii) no person has the right to act as an underwriter or as a financial advisor to the Company in connection with the offer and sale of the Shares; no person has the right, contractual or otherwise, to cause the Company to register under the Securities Act any shares of Common Stock or shares of any other capital stock of or other equity interests in the Company, or to include any such shares or interests in the Resale Registration Statement or the offering contemplated by this Agreement, except any such right that has been validly waived in writing as of the date of this Agreement, copies of such waivers to have been made available to you; no person has the right, contractual or otherwise, to cause the Company to register under the Securities Act any shares of Common Stock or shares of any other capital stock of or other equity interests in the Company, or to include any such shares or interests in any other offering of securities of the Company.

(m) Each of the Company and its Subsidiaries has all necessary licenses, authorizations, consents and approvals and has made all necessary filings required under any applicable law, regulation or rule, and has obtained all necessary licenses, authorizations, consents and approvals from other persons, in order to conduct their respective businesses, except where failure to have, make or obtain the same would not, individually or in the aggregate, have a Material Adverse Effect; neither the Company nor its Subsidiaries is in violation of, or in default under, or has received notice of any proceedings relating to revocation or modification of, any such license, authorization, consent or approval or any federal, state, local or foreign law, regulation or rule or any decree, order or judgment applicable to the Company or its Subsidiaries, except where such violation, default, revocation or modification would not, individually or in the aggregate, have a Material Adverse Effect.

(n) The Company's Common Stock is registered under Section 12 of the Exchange Act. The Company has filed all SEC Reports on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Exchange Act and, in each case, to the rules promulgated thereunder, as applicable, and none of the SEC Reports, when filed, contained any untrue statement of a

material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Company meets the registration and transaction requirements for use of Form S-3 for the registration of the Shares for resale by the Purchasers.

(o) The financial statements included in the SEC Reports, together with the related notes and schedules, present fairly the financial position of the Company as of the dates indicated and the results of operations, cash flows and changes in stockholders' equity of the Company for the periods specified and have been prepared in compliance in all material respects with the requirements of the Securities Act and Exchange Act and in conformity with U.S. generally accepted accounting principles applied on a consistent basis during the periods involved, except as otherwise disclosed therein and, in the case of unaudited, interim financial statements, subject to normal year-end audit adjustments and the exclusion of certain footnotes.

(p) There are no actions, suits, claims, investigations or proceedings pending to which the Company or its Subsidiaries or, to the Company's knowledge, any of their respective directors or officers is or would be a party or of which any of their respective properties is or would be subject at law or in equity, before or by any federal, state, local or foreign governmental or regulatory commission, board, body, authority or agency, or before or by any self-regulatory organization or other non-governmental regulatory authority (including, without limitation, Nasdaq), except any such action, suit, claim, investigation or proceeding which, if resolved adversely to the Company or its Subsidiaries, would not, individually or in the aggregate, have a Material Adverse Effect (assuming, with respect to any such action, suit, claim, investigation or proceeding to which the Company or its Subsidiaries is a party, that such action, suit, claim, investigation or proceeding was resolved adversely to the Company or its Subsidiaries, as the case may be); and, to the Company's knowledge, no such actions, suits, claims, investigations or proceedings are threatened or contemplated.

(q) Ernst & Young LLP, who have certified certain financial statements of the Company and delivered their report with respect to the audited financial statements included in the SEC Reports, are independent public accountants with respect to the Company within the meaning of the Securities Act and the applicable published rules and regulations thereunder.

(r) Each stock option granted under any equity incentive plan of the Company (each, a "Stock Plan") was granted with a per share exercise price no less than the fair market value per share of Common Stock on the grant date of such option, and no such grant involved any "back-dating" or similar practice with respect to the effective date of such grant; except as would not, individually or in the aggregate, have a Material Adverse Effect, each such option (i) was granted in compliance with applicable law and with the applicable Stock Plan(s), (ii) was duly approved by the board of directors (or a duly authorized committee thereof or by an executive officer pursuant to Section 157(c) of the Delaware General Corporation Law) of the Company and (iii) has been properly accounted for in the Company's financial statements in accordance with U.S. generally accepted accounting principles and disclosed in the Company's filings with the Commission.

(s) Prior to the date of this Agreement, there has not been (i) any material adverse change, or any development that would be reasonably expected to result in a material

adverse change, in the business, properties, management, financial condition or results of operations of the Company and its Subsidiaries taken as a whole, (ii) any transaction to which the Company is a party which is material to the Company and its Subsidiaries taken as a whole, (iii) any obligation or liability, direct or contingent (including any off-balance sheet obligations), incurred by the Company or its Subsidiaries, which is material to the Company and its Subsidiaries taken as a whole, (iv) any change in the capital stock or outstanding indebtedness of the Company or its Subsidiaries (other than the issuance of shares of Common Stock upon exercise of stock options or vesting of restricted stock units granted under Stock Plans in existence on the date hereof and the grant of awards under Stock Plans in existence on the date hereof, in each case in the ordinary course of business) or (v) any dividend or distribution of any kind declared, paid or made on the capital stock of the Company.

(t) Each of the Company and its Subsidiaries has good title to all personal property, free and clear of all liens, claims, security interest or other encumbrances, except those that do not materially interfere with the use or proposed use of such property by the Company or its Subsidiaries, respectively, or as would not materially or adversely affect the value of such property; neither the Company nor its Subsidiaries own any real property; all the real property held under lease by the Company or its Subsidiaries is held thereby under valid, subsisting and enforceable leases.

(u) Except as would not, individually or in the aggregate, have a Material Adverse Effect, (i) the Company or its Subsidiaries owns the inventions, patent applications, patents, trademarks (both registered and unregistered), tradenames, service names, copyrights, trade secrets and other proprietary information (collectively, “Intellectual Property”) described in the SEC Reports as being owned by it and owns or has obtained valid and enforceable licenses for, or other rights to use, all Intellectual Property used in, or necessary for, the conduct of the businesses of the Company and its Subsidiaries as currently conducted or as proposed to be conducted (including the commercialization of products or services described in the SEC Reports) (collectively, “Company Intellectual Property”), except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the rights of creditors generally and general equitable principles; (ii) there are no third parties who have, or, to the Company’s knowledge, will be able to establish, rights to use any Company Intellectual Property that is owned or purported to be owned by the Company or its Subsidiaries, other than any co-owner of any patent or patent application constituting Intellectual Property who is listed as such on the records of the U.S. Patent and Trademark Office (the “PTO”), and, to the Company’s knowledge, no third party has any ownership interest in or to any Company Intellectual Property that is exclusively licensed to the Company or its Subsidiaries, except for, and to the extent of, the ownership rights of the owners of the Company Intellectual Property which the SEC Reports disclose is licensed to the Company or its Subsidiaries; (iii) to the Company’s knowledge, there is no infringement, misappropriation or other violation by any third parties of any Company Intellectual Property owned by or exclusively licensed to the Company or its Subsidiaries; (iv) neither the Company nor its Subsidiaries has received any notice from, and there is no pending or, to the Company’s knowledge, threatened action, suit, proceeding or claim by, others challenging the Company’s or its Subsidiaries’ rights in or to any Company Intellectual Property, and the Company is unaware of any facts which would form a reasonable basis for any such action, suit, proceeding or claim; (v) other than the opposition by Hexal AG against European Patent No. 2914296 neither the Company nor its Subsidiaries has received any notice from, and there is no pending or, to the

Company's knowledge, threatened action, suit, proceeding or claim by, others challenging the validity, enforceability or scope of any Company Intellectual Property, and the Company is unaware of any facts which would form a reasonable basis for any such action, suit, proceeding or claim; (vi) neither the Company nor its Subsidiaries has received any notice from, and there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by, others that the Company or its Subsidiaries infringes, misappropriates or otherwise violates, or would, upon the commercialization of any product or service described in the SEC Reports as under development, infringe, misappropriate or violate, any Intellectual Property of others, and the Company is unaware of any facts which would form a reasonable basis for any such action, suit, proceeding or claim; (vii) each of the Company and its Subsidiaries has complied with the applicable terms of each agreement pursuant to which Company Intellectual Property has been licensed to such entity, and all such agreements are in full force and effect; (viii) to the Company's knowledge, there is no patent or patent application that contains claims that, if practiced, would infringe the issued or pending claims of any patents or patent applications included in the Company Intellectual Property or that challenges the validity, enforceability or scope of any of the Company Intellectual Property; (ix) the manufacture, use and sale of the product candidates described in the SEC Reports as under development by the Company or its Subsidiaries fall within the scope of the claims of one or more patents or patent applications owned by, or exclusively licensed to, the Company or its Subsidiaries, as the case may be; (x) each of the Company and its Subsidiaries has complied and, to the Company's knowledge, each of their respective licensors has complied, with its duty of candor and disclosure to the PTO, as applicable, with respect to all patent applications owned or exclusively licensed to such entity and included in the Company Intellectual Property and filed with the PTO; (xi) all conditions stated in any license agreement under which Company Intellectual Property is licensed to the Company or its Subsidiaries that are required to be satisfied in order for the Company or its Subsidiaries, as applicable, to retain exclusive rights have been timely satisfied; (xii) to the Company's knowledge, the issued patents owned by or exclusively licensed to the Company or its Subsidiaries are valid and enforceable and the Company is unaware of any facts that would preclude the issuance of a valid and enforceable patent on any pending patent application owned by the Company or its Subsidiaries; (xiii) the Company has taken reasonable steps necessary to secure interests of each of the Company and its Subsidiaries in the Company Intellectual Property purported to be owned by such entity from the employees, consultants, agents and contractors of such entity; (xiv) there are no outstanding options, licenses or agreements of any kind relating to the Company Intellectual Property owned by the Company or its Subsidiaries that are required to be described in the SEC Reports that are not so described therein; (xv) neither the Company nor its Subsidiaries is a party to or bound by any options, licenses or agreements with respect to the Intellectual Property of any other person or entity that are required to be described in the SEC Reports that are not so described therein; and (xvi) no government funding, facilities or resources of a university, college, other educational institution or research center was used in the development of any Company Intellectual Property that is owned or purported to be owned by the Company or its Subsidiaries that would confer upon any governmental agency or body, university, college, other educational institution or research center any claim or right in or to any such Company Intellectual Property.

(v) Neither the Company nor its Subsidiaries is engaged in any unfair labor practice; except for matters which would not, individually or in the aggregate, have a Material Adverse Effect, (i) there is (A) no unfair labor practice complaint pending or, to the Company's knowledge, threatened against the Company or its Subsidiaries before the National Labor

Relations Board, and no grievance or arbitration proceeding arising out of or under collective bargaining agreements is pending or, to the Company's knowledge, threatened, (B) no strike, labor dispute, slowdown or stoppage pending or, to the Company's knowledge, threatened against the Company or its Subsidiaries and (C) no union representation dispute currently existing concerning the employees of the Company or its Subsidiaries, (ii) to the Company's knowledge, no union organizing activities are currently taking place concerning the employees of the Company or its Subsidiaries and (iii) there has been no violation of any federal, state, local or foreign law relating to discrimination in the hiring, promotion or pay of employees, any applicable wage or hour laws or any provision of the Employee Retirement Income Security Act of 1974, as amended, or the rules and regulations promulgated thereunder concerning the employees of the Company or its Subsidiaries.

(w) The Company and its Subsidiaries and their respective properties, assets and operations are in compliance with, and the Company and its Subsidiaries hold all permits, authorizations and approvals required under, Environmental Laws (as defined below), except to the extent that failure to so comply or to hold such permits, authorizations or approvals would not, individually or in the aggregate, have a Material Adverse Effect; there are no past, present or, to the Company's knowledge, reasonably anticipated future events, conditions, circumstances, activities, practices, actions, omissions or plans that would reasonably be expected to give rise to any material costs or liabilities to the Company or its Subsidiaries under, or to interfere with or prevent compliance by the Company or its Subsidiaries with, Environmental Laws; except as would not, individually or in the aggregate, have a Material Adverse Effect, neither the Company nor its Subsidiaries (i) is the subject of any investigation, (ii) has received any notice or claim, (iii) is a party to or affected by any pending or, to the Company's knowledge, threatened action, suit or proceeding, (iv) is bound by any judgment, decree or order or (v) has entered into any agreement, in each case relating to any alleged violation of any Environmental Law or any actual or alleged release or threatened release or cleanup at any location of any Hazardous Materials (as defined below) (as used herein, "Environmental Law" means any federal, state, local or foreign law, statute, ordinance, rule, regulation, order, decree, judgment, injunction, permit, license, authorization or other binding requirement, or common law, relating to health, safety or the protection, cleanup or restoration of the environment or natural resources, including those relating to the distribution, processing, generation, treatment, storage, disposal, transportation, other handling or release or threatened release of Hazardous Materials, and "Hazardous Materials" means any material (including, without limitation, pollutants, contaminants, hazardous or toxic substances or wastes) that is regulated by or may give rise to liability under any Environmental Law).

(x) All tax returns required to be filed by the Company or its Subsidiaries have been timely filed, and all taxes and other assessments of a similar nature (whether imposed directly or through withholding) including any interest, additions to tax or penalties applicable thereto due or claimed to be due from such entities have been timely paid, other than those being contested in good faith and for which adequate reserves have been provided, except to the extent failure to file such return or make such payments would not, individually or in the aggregate, have a Material Adverse Effect.

(y) The Company maintains insurance covering the properties, operations, personnel and businesses of the Company and its Subsidiaries as the Company reasonably deems

adequate to insure against such losses and risks in accordance with customary industry practice to protect the Company and Subsidiaries and their respective businesses; all such insurance is fully in force on the date hereof and will be fully in force at the time of purchase; the Company has no reason to believe that it will not be able to renew any such insurance as and when such insurance expires or obtain similar coverage at reasonable cost from similar insurers.

(z) The Company (i) does not have any material lending or other relationship with any bank or lending affiliate of the Placement Agents and (ii) does not intend to use any of the proceeds from the sale of the Shares hereunder to repay any outstanding debt owed to any affiliate of the Placement Agents.

(aa) Neither the Company nor its Subsidiaries has sent any communication or received any written communication regarding termination of, or intent not to renew, any of the contracts or agreements referred to or described in the SEC Reports, and no such termination or non-renewal has been threatened by the Company or its Subsidiaries or, to the Company's knowledge, threatened in writing by any other party to any such contract or agreement.

(bb) The Company has established and maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(cc) The Company has established and maintains "disclosure controls and procedures" (as such term is defined in Rules 13a-15 and 15d-15 under the Exchange Act) and "internal control over financial reporting" (as such term is defined in Rules 13a-15 and 15d-15 under the Exchange Act); such disclosure controls and procedures are designed to ensure that material information relating to the Company, including its Subsidiaries, is made known to the Company's Chief Executive Officer and Chief Financial Officer by others within those entities, and such disclosure controls and procedures are effective to perform the functions for which they were established; the Company's independent registered public accountants and the Audit Committee of the Board of Directors of the Company have been advised of: (i) all significant deficiencies, if any, in the design or operation of internal controls which could adversely affect the Company's ability to record, process, summarize and report financial data; and (ii) all fraud, if any, whether or not material, that involves management or other employees who have a role in the Company's internal controls; at December 31, 2018, no "material weakness" (as such term is defined in Rule 1-02(a)(4) of Regulation S-X under the Act) existed with respect to the Company's internal control over financial reporting and since the end of the Company's most recent audited fiscal year there have been no "significant deficiencies" or "material weaknesses" in the Company's internal control over financial reporting identified to or by the Company's independent registered accountants or audit committee or Board of Directors of the Company; since the date of the most recent evaluation of such disclosure controls and procedures and internal controls, there have been no significant changes in internal controls or in other factors that could significantly affect internal controls, including any corrective actions with regard to significant deficiencies and

material weaknesses; and the Company has taken all necessary actions to ensure that the principal executive officers (or their equivalents) and principal financial officers (or their equivalents) of the Company have made all certifications required by the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”) and any related rules and regulations promulgated by the Commission, and the statements contained in each such certification are complete and correct; the Company, its Subsidiaries and the Company’s directors and officers, in their capacities as such, are each, in compliance in all material respects with the applicable provisions of the Sarbanes-Oxley Act and the rules and regulations promulgated thereunder.

(dd) Each “forward-looking statement” (within the meaning of Section 27A of the Securities Act or Section 21E of the Exchange Act) contained or incorporated by reference in the SEC Reports has been made or reaffirmed with a reasonable basis and in good faith.

(ee) All statistical or market-related data included in the SEC Reports are based on or derived from sources that the Company reasonably believes to be reliable and accurate, and the Company has obtained the written consent to the use of such data from such sources to the extent required.

(ff) Neither the Company nor its Subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or its Subsidiaries has taken, directly or indirectly, without giving effect to activities by the Placement Agents, any action designed to or that would constitute or that might reasonably be expected to cause or result in, under the Exchange Act or otherwise, stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares.

(gg) The interactive data in eXtensible Business Reporting Language included in the SEC Reports fairly presents the information called for in all material respects and has been prepared in accordance with the Commission’s rules and guidelines applicable thereto.

(hh) Neither the Company nor its Subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or its Subsidiaries has taken any action, directly or indirectly, while acting on behalf of the Company or its Subsidiaries, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “Foreign Corrupt Practices Act”); the Company is not aware of any such action, directly or indirectly, having been taken on behalf of the Company or its Subsidiaries; and the Company and its Subsidiaries and, to the knowledge of the Company, their respective affiliates have instituted and maintain policies and procedures designed to ensure continued compliance therewith.

(ii) The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the USA Patriot Act, the Bank Secrecy Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “Money Laundering Laws”); and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator or non-governmental authority involving the Company or its Subsidiaries with respect to the Money Laundering Laws is pending or, to the Company’s knowledge, threatened.

(jj) Neither the Company nor its Subsidiaries nor any of their respective affiliates, directors, officers, nor to the knowledge of the Company, any agent or employee of the Company or its Subsidiaries is subject to any sanctions administered or enforced by the Office of Foreign Assets Control (“OFAC”) of the United States Treasury Department, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty’s Treasury or any other relevant sanctions authority; and the Company will not directly or indirectly use the proceeds of the offering of the Shares contemplated hereby, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity for the purpose of financing the activities of any person that is the target of sanctions administered or enforced by such authorities or in connection with any country or territory that is the target of country- or territory-wide OFAC sanctions (currently, Iran, Syria, Cuba, North Korea, and the Crimea Region of Ukraine).

(kk) The Subsidiaries are not currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on the Subsidiaries’ capital stock or ownership interests, as applicable, from repaying to the Company any loans or advances to the Subsidiaries from the Company or from transferring any of the Subsidiaries’ property or assets to the Company, except, in each case, as described in the SEC Reports.

(ll) The preclinical studies and clinical trials that are described in, or the results of which are referred to in, the SEC Reports were and, if still pending, are being conducted in all material respects in accordance with standard accepted medical and scientific research procedures and all applicable Laws, including, but not limited to, the Federal Food, Drug and Cosmetic Act (the “FDCA”) and its applicable implementing regulations at 21 C.F.R. Parts 50, 54, 56, 58 and 312; the descriptions of and information regarding the results of such studies, tests and trials, and the data and results derived therefrom, contained in the SEC Reports are accurate and complete, as of the date indicated, in all material respects and fairly present the data derived from such tests and trials, and neither the Company nor its Subsidiaries, after due inquiry, has any knowledge of any other studies, tests, trials, publications, presentations or other information relating to the Company’s products or product candidates not described in the SEC Reports the results of which reasonably call into question the results described or referred to in the SEC Reports; neither the Company nor its Subsidiaries has received any notices or other correspondence from the Food and Drug Administration of the U.S. Department of Health and Human Services or any committee thereof or from any other U.S. or foreign government or drug or medical device regulatory agency (collectively, the “Regulatory Agencies”) requiring or threatening the termination, suspension or material modification of any studies, tests or trials that are described or referred to in the SEC Reports; and the Company and its Subsidiaries have operated and currently are in compliance in all material respects with all applicable rules, regulations and policies of the Regulatory Agencies.

(mm) Except as would not, individually or in the aggregate, have or may reasonably be expected to have a Material Adverse Effect: (i) neither the Company nor its Subsidiaries has received any written notice of adverse filing, warning letter, untitled letter or other correspondence or notice from any Regulatory Agency or other relevant regulatory authorities, or any other court or arbitrator or federal, state, local or foreign governmental or regulatory authority, alleging or asserting material noncompliance with the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.) or similar state, federal or foreign law or regulation; (ii) the Company and its Subsidiaries, and to the Company’s knowledge, their respective directors, officers, employees or

agents, are and have been since January 1, 2016 in compliance in all material respects with applicable health care laws, including without limitation, the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), the U.S. Civil False Claims Act (31 U.S.C. § 3729 et seq.), 18 U.S.C. §§ 286 and 287, and the health care fraud criminal provisions under the U.S. Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) (42 U.S.C. § 1320d et seq.), the exclusion laws (42 U.S.C. § 1320a-7), Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act), HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. § 17921 et seq.), each as amended, and the regulations promulgated thereunder; and all other comparable local, state, federal, national, supranational and foreign laws, and the regulations promulgated thereunder, (collectively, “Health Care Laws”); (iii) neither the Company nor its Subsidiaries has received written notice of any ongoing claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any U.S. or non-U.S. federal, national, state, provincial, local, municipal, international government or other governmental, administrative or regulatory authority, governmental, administrative or regulatory agency or body, department, board, bureau, agency or instrumentality, court, tribunal, arbitrator or arbitral body (public or private) or self-regulatory organization (each, a “Governmental Authority”) or third party alleging that any product, operation or activity is in violation of any Health Care Laws or has any knowledge that any such Governmental Authority or third party is considering any such claim, litigation, arbitration, action, suit, investigation or proceeding; (iv) neither the Company nor its Subsidiaries or any of their respective directors, officers, employees or, to the Company’s knowledge, agents, is or has been debarred, suspended or excluded, or has been convicted of any crime or engaged in any conduct that would result in a debarment, suspension or exclusion from any federal or state government health care program; and (v) the Company and its Subsidiaries are not a party to nor have any ongoing reporting obligations pursuant to any corporate integrity agreement, deferred prosecution agreement, monitoring agreement, consent decree, settlement order, plan of correction or similar agreement imposed by any Governmental Authority.

(nn) The Company has not received any notice from the Nasdaq Global Market regarding the delisting of the Common Stock. The Company is in material compliance with all listing and maintenance requirements of Nasdaq on the date hereof.

(oo) No “bad actor” disqualifying event described in Rule 506(d)(1)(i)-(viii) of the 1933 Act (a “Disqualification Event”) is applicable to the Company or, to the Company’s knowledge, any Company Covered Person (as defined below), except for a Disqualification Event as to which Rule 506(d)(2)(ii-iv) or (d)(3), is applicable. “Company Covered Person” means, with respect to the Company as an “issuer” for purposes of Rule 506 promulgated under the 1933 Act, any person listed in the first paragraph of Rule 506(d)(1). Other than the Placement Agents, the Company is not aware of any Person (other than any Company Covered Person) that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of the Shares pursuant to this Agreement. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Placement Agents a copy of any disclosures provided thereunder.

(pp) The Company shall file a Form D with respect to the Shares as required under Regulation D and, to the extent the Form D is not publicly available on the Commission’s

EDGAR reporting system, will provide a copy thereof to each Purchaser promptly after such filing. The Company, on or before the Closing Date, shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for or to qualify the Shares for sale to the Purchasers at the Closing, pursuant to this Agreement under applicable securities or blue sky laws of the states of the United States (or to obtain an exemption from such qualification), and, if requested by a Purchaser, shall provide evidence of any material action so taken to such Purchaser on or prior to the Closing Date. The Company shall make all filings and reports relating to the offer and sale of the Shares required under applicable securities or blue sky laws of the states of the United States following the Closing Date.

(qq) Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2 of this Agreement, no registration under the Securities Act is required for the offer and sale of the Shares by the Company to the Purchasers hereunder. The issuance and sale of the Shares hereunder does not contravene the rules and regulations of Nasdaq.

3.2 Representations, Warranties and Covenants of the Purchasers. Each Purchaser, for itself and for no other Purchaser, hereby represents, warrants and covenants to the Company and the Placement Agents as of the Closing:

(a) Such Purchaser has all requisite legal and corporate or other power and capacity and has taken all requisite corporate or other action to execute and deliver this Agreement, to purchase the Shares and to carry out and perform all of its obligations under this Agreement; and **(b)** this Agreement constitutes the legal, valid and binding obligation of such Purchaser, enforceable against such Purchaser in accordance with its terms, except **(i)** as limited by applicable bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally and **(ii)** as limited by equitable principles generally.

(b) At the time such Purchaser was offered the Shares, it was, and as of the date hereof it is, either: **(i)** an "accredited investor" as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) under the Securities Act or **(ii)** a "qualified institutional buyer" as defined in Rule 144A(a) under the Securities Act. Such Purchaser is aware of the Company's business affairs and financial condition and has had access to and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Shares. Such Purchaser has such business and financial experience as is required to give it the capacity to protect its own interests in connection with the purchase of the Shares. Such Purchaser acknowledges that it has had the opportunity to review the Company's filings with the Commission and has been afforded **(i)** the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Shares and the merits and risks of investing in the Shares and **(ii)** the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment.

(c) Such Purchaser is purchasing the Shares for its own account, for investment purposes only, and not with a present view to, or for, resale, distribution or fractionalization thereof, in whole or in part (within the meaning of the Securities Act.) in violation of the Securities Act. Such Purchaser understands that its acquisition of the Shares has not been registered under

the Securities Act or registered or qualified under any state securities law in reliance on specific exemptions therefrom, which exemptions may depend upon, among other things, the bona fide nature of such Purchaser's investment intent as expressed herein. Such Purchaser will not, directly or indirectly, offer, sell, pledge, transfer or otherwise dispose of (or solicit any offers to buy, purchase or otherwise acquire or take a pledge of) the Shares except in compliance with the Securities Act and the rules and regulations promulgated thereunder.

(d) Such Purchaser represents and acknowledges that it has not been solicited to offer to purchase or to purchase any Shares by means of any general solicitation or advertising within the meaning of Regulation D under the Securities Act.

(e) Such Purchaser represents that it is not a person of the type described in Section 506(d) of Regulation D under the Securities Act that would disqualify the Company from engaging in a transaction pursuant to Section 506 of Regulation D under the Securities Act.

(f) Such Purchaser understands that the Shares being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and such Purchaser's compliance with, the representations, warranties, agreements, acknowledgements and understandings of such Purchaser set forth herein in order to determine the availability of such exemptions and the eligibility of such Purchaser to acquire the Shares. Such Purchaser further acknowledges and understands that the Shares may not be resold or otherwise transferred except in a transaction registered under the Securities Act or unless an exemption from such registration is available.

(g) Such Purchaser understands that nothing in this Agreement or any other materials presented to the Purchaser in connection with the purchase and sale of the Shares constitutes legal, tax or investment advice. Such Purchaser has consulted such legal, tax and investment advisors and made such investigations as such Purchaser, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Shares. Such Purchaser understands that the Placement Agents have acted solely as the agents of the Company in this placement of the Shares and such Purchaser has not relied on the business, legal, tax or investment advice of the Placement Agents or any of its agents, counsel or affiliates in making its investment decision hereunder, and confirms that none of such persons has made any representations or warranties to such Purchaser in connection with the transactions contemplated herein.

(h) Dispositions.

(i) Such Purchaser will not, prior to the effectiveness of the Resale Registration Statement (as defined below), if then prohibited by law or regulation other than pursuant to an available exemption under the Securities Act: (i) sell, offer to sell, solicit offers to buy, dispose of, loan, pledge or grant any right with respect to (collectively, a "**Disposition**") the Shares; or (ii) engage in any hedging or other transaction which is designed or could reasonably be expected to lead to or result in a Disposition of the Shares by the Purchaser or an affiliate.

(ii) As of the Closing Date, such Purchaser has not directly or indirectly, nor has any person acting on behalf of or pursuant to any understanding with such Purchaser, engaged in any purchases or sales of the Company's securities (including, without limitation, any

Short Sales involving the Company's securities) since the time that such Purchaser was first contacted by the Company, the Placement Agents or any other person regarding the transactions contemplated hereby. Such Purchaser covenants that neither it nor any person acting on its behalf or pursuant to any understanding with it will engage in any purchases or sales of the Company's securities (including, without limitation, any Short Sales involving the Company's securities) prior to the time that the transactions contemplated by this Agreement are publicly disclosed.

(i) Such Purchaser has independently evaluated the merits of its decision to purchase Shares pursuant to this Agreement. Such Purchaser understands that nothing in this Agreement or any other materials presented to such Purchaser in connection with the purchase and sale of the Shares constitutes legal, tax or investment advice.

(j) Such Purchaser will hold in confidence all information concerning this Agreement and the sale and issuance of the Shares until the Company has made a public announcement concerning this Agreement and the sale and issuance of the Shares, which shall be made not later than 9:00 am New York time on the first Trading Day immediately after the signing of this Agreement.

(k) Purchaser understands that no United States federal or state agency or any other government or governmental agency has passed upon or made any recommendation or endorsement of the Shares.

(l) Legend.

(i) Such Purchaser understands that the Shares shall bear a restrictive legend in substantially the following form (and a stop transfer order may be placed against transfer of the certificates for the Shares):

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR IN ANY OTHER JURISDICTION. THE SECURITIES REPRESENTED HEREBY MAY NOT BE OFFERED, SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER APPLICABLE SECURITIES LAWS UNLESS OFFERED, SOLD OR TRANSFERRED PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THOSE LAWS.”

(ii) The Company shall, at its sole expense, upon appropriate notice from any Purchaser stating that Registrable Shares have been sold pursuant to an effective Registration Statement, timely prepare and deliver certificates or book-entry shares representing the Shares to be delivered to a transferee pursuant to the Registration Statement, which certificates or book-entry shares shall be free of any restrictive legends and in such denominations and registered in such names as such Purchaser may request. Further, the Company shall, at its sole expense, cause its legal counsel or other counsel satisfactory to the transfer agent: (i) while the Registration Statement is effective, to issue to the transfer agent a “blanket” legal opinion to allow sales without restriction pursuant to the effective Registration Statement, and (ii) provide all other

opinions as may reasonably be required by the transfer agent in connection with the removal of legends. A Purchaser may request that the Company remove, and the Company agrees to authorize the removal of, any legend from such Shares, following the delivery by a Purchaser to the Company or the Company's transfer agent of a legended certificate representing such Shares: (i) following any sale of such Shares pursuant to Rule 144, (ii) if such Shares are eligible for sale under Rule 144(b) (1), or (iii) following the time that the Registration Statement is declared effective. If a legend removal request is made pursuant to the foregoing, the Company will, no later than three Trading Days following the delivery by a Purchaser to the Company or the Company's transfer agent of a legended certificate representing such Shares (or a request for legend removal, in the case of Shares issued in book-entry form), deliver or cause to be delivered to such Purchaser a certificate representing such Shares that is free from all restrictive legends or an equivalent book-entry position, as requested by the Purchaser. Certificates for Shares free from all restrictive legends may be transmitted by the Company's transfer agent to the Purchasers by crediting the account of the Purchaser's prime broker with the Depository Trust Company ("**DTC**") as directed by such Purchaser. The Company warrants that the Shares shall otherwise be freely transferable on the books and records of the Company as and to the extent provided in this Agreement. If a Purchaser effects a transfer of the Shares in accordance with **Section 3.2(l)(ii)**, the Company shall permit the transfer and shall promptly instruct its transfer agent to issue one or more certificates or credit shares to the applicable balance accounts at DTC in such name and in such denominations as specified by such Purchaser to effect such transfer. Such Purchaser hereby agrees that the removal of the restrictive legend pursuant to this **Section 3.2(l)(ii)** is predicated upon the Company's reliance that such Purchaser will sell any such Shares pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom.

(m) Immediately prior to the Closing, such Purchaser, together with its affiliates and any other persons acting as a group together with such Purchaser and any of its affiliates, beneficially owned the number of shares of Common Stock set forth on such Purchaser's signature page attached hereto (as such ownership is calculated pursuant to the rules of Nasdaq).

(n) If such Purchaser is not a United States person (as defined by Section 7701(a)(30) of the Code), such Purchaser hereby represents that it has satisfied itself as to the full observance of the laws of its jurisdiction in connection with any invitation to subscribe for the Shares or any use of this Agreement, including (a) the legal requirements within its jurisdiction for the purchase of the Shares, (b) any foreign exchange restrictions applicable to such purchase or acquisition, (c) any government or other consents that may need to be obtained, and (d) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale or transfer of the Shares. Such Purchaser's subscription and payment for and continued beneficial ownership of the Shares will not violate any applicable securities or other laws of such Purchaser's jurisdiction.

(o) Acknowledgements Regarding Placement Agents by each Purchaser.

(i) Such Purchaser acknowledges that the Placement Agents are (a) acting as Placement Agent on a "best efforts" basis for the Shares being offered hereby and will be compensated by the Company for acting in such capacity, and (b) acting solely as Placement Agents in connection with the execution, delivery and performance of the Transaction Documents

and is not acting as an underwriter or in any other capacity and are not and shall not be construed as a fiduciary for such Purchaser, the Company or any other person or entity in connection with the execution, delivery and performance of the Transaction Documents. Such Purchaser represents that: (i) it was contacted regarding the sale of the Shares by the Placement Agents or the Company (or an authorized agent or representative thereof) with whom such Purchaser entered into a verbal or written confidentiality agreement; and (ii) no Shares were offered or sold to it by means of any form of general solicitation or general advertising as such terms are used in Regulation D of the Securities Act.

(ii) Such Purchaser represents that it is making this investment based on the results of its own due diligence investigation of the Company, and has not relied on any information or advice furnished by or on behalf of the Placement Agents in connection with the transactions contemplated hereby. Such Purchaser acknowledges that the Placement Agents have not made, and will not make, any representations and warranties with respect to the Company or the transactions contemplated hereby, and such Purchaser will not rely on any statements made by the Placement Agents, orally or in writing, to the contrary.

(p) **Exculpation of the Placement Agents.** Such Purchaser acknowledges that it has read the information set forth on **Exhibit B** hereto and agrees for the express benefit of the Placement Agents, its affiliates and its representatives that neither the Placement Agents nor any of their affiliates or any of their representatives: (i) has any duties or obligations other than those specifically set forth in the Engagement Letter; (ii) shall be liable to such Purchaser for any improper payment made in accordance with the information provided by the Company; (iii) makes any representation or warranty, or has any responsibilities as to the validity, accuracy, value or genuineness of any information, certificates or documentation delivered by or on behalf of the Company pursuant to this Agreement or the other Transaction Documents or in connection with any of the transactions contemplated hereby and thereby; or (iv) shall be liable to such Purchaser (A) for any action taken, suffered or omitted by any of them in good faith and reasonably believed to be authorized or within the discretion or rights or powers conferred upon it by this Agreement or any other Transaction Documents or (B) for anything which any of them may do or refrain from doing in connection with this Agreement or any other Transaction Document.

4. REGISTRATION RIGHTS

4.1 Definitions. For the purpose of this Section 4:

(a) the term “**Resale Registration Statement**” shall mean any registration statement required to be filed by **Section 4.2** below, and shall include any preliminary prospectus, final prospectus, exhibit or amendment included in or relating to such registration statements; and

(b) the term “**Registrable Shares**” means the Shares; *provided, however*, that a security shall cease to be a Registrable Share upon the earliest to occur of the following: (i) a Resale Registration Statement registering such security under the Securities Act has been declared or becomes effective and such security has been sold or otherwise transferred by the holder thereof pursuant to and in a manner contemplated by such effective Resale Registration Statement, (ii) such security is sold pursuant to Rule 144 under circumstances in which any legend borne by such security relating to restrictions on transferability thereof, under the Security Act or otherwise, is removed by the Company, (iii) such security is eligible to be sold pursuant to Rule 144 without

condition or restriction, including without any limitation as to volume of sales, and without the Holder complying with any method of sale requirements or notice requirements under Rule 144, or (iv) such security shall cease to be outstanding following its issuance.

4.2 Registration Procedures and Expenses. The Company shall:

(a) file a Resale Registration Statement (the “**Mandatory Registration Statement**”) with the Commission as soon as practicable but in no event later than the date 30 days following the Closing Date (the “**Filing Date**”) to register all of the Registrable Shares on Form S-3 under the Securities Act (providing for shelf registration of such Registrable Shares under Commission Rule 415). In the event that Form S-3 is not available for the registration of the Registrable Shares, the Company shall register the resale of the Registrable Shares on such other form as is available to the Company;

(b) use its commercially reasonable efforts to cause such Mandatory Registration Statement to be declared effective as soon as practicable and in any event within 30 days following the Filing Date (or, in the event the Staff reviews and has written comments to the Mandatory Registration Statement, within 120 days following the Filing Date) (the earlier of the foregoing or the applicable date set forth in **Section 4.2(i)**, the “**Effectiveness Deadline**”), such efforts to include, without limiting the generality of the foregoing, preparing and filing with the Commission any financial statements or other information that is required to be filed prior to the effectiveness of such Mandatory Registration Statement;

(c) notwithstanding anything contained in this Agreement to the contrary, in the event that the Commission limits the amount of Registrable Shares or otherwise requires a reduction in the number of Registrable Shares that may be included and sold by the Purchasers in the Mandatory Registration Statement (in each case, subject to **Section 4.3**), then the Company shall prepare and file (i) within 10 Trading Days of the first date or time that such excluded Registrable Shares may then be included in a Resale Registration Statement if the Commission shall have notified the Company that certain Registrable Shares were not eligible for inclusion in the Resale Registration Statement or (ii) in all other cases, within 20 days following the date that the Company becomes aware that such additional Resale Registration Statement is required (the “**Additional Filing Date**”), a Resale Registration Statement (any such Resale Registration Statement registering such excluded Registrable Shares, an “**Additional Registration Statement**” and, together with the Mandatory Registration Statement, a “**Resale Registration Statement**”) to register any Registrable Shares that have been excluded (or, if applicable, the maximum number of such excluded Registrable Shares that the Company is permitted to register for resale on such Additional Registration Statement consistent with Commission guidance), if any, from being registered on the Mandatory Registration Statement;

(d) not less than two (2) Trading Days prior to the filing of a Registration Statement or any related prospectus or any amendment or supplement thereto, furnish via email to those Purchasers who have supplied the Company with email addresses copies of all such documents proposed to be filed, which documents (other than any document that is incorporated or deemed to be incorporated by reference therein) will be subject to the review of such Purchasers. The Company shall reflect in each such document when so filed with the Commission such comments regarding the Purchasers and the plan of distribution as the Purchasers may reasonably

and promptly propose no later than two (2) Trading Days after the Purchasers have been so furnished with copies of such documents as aforesaid.

(e) use its commercially reasonable efforts to cause any such Additional Registration Statement to be declared effective as promptly as practicable following the Additional Filing Date, such efforts to include, without limiting the generality of the foregoing, preparing and filing with the Commission any financial statements or other information that is required to be filed prior to the effectiveness of any such Additional Registration Statement;

(f) promptly prepare and file with the Commission such amendments and supplements to such Resale Registration Statements and the prospectus used in connection therewith as may be necessary to keep such Resale Registration Statements continuously effective and free from any material misstatement or omission to state a material fact therein until termination of such obligation as provided in **Section 4.7** below, subject to the Company's right to suspend pursuant to **Section 4.6**;

(g) furnish to the Purchasers such number of copies of prospectuses in conformity with the requirements of the Securities Act and such other documents as the Purchasers may reasonably request, in order to facilitate the public sale or other disposition of all or any of the Registrable Shares by the Purchasers;

(h) file such documents as may be required of the Company for normal securities law clearance for the resale of the Registrable Shares in such states of the United States as may be reasonably requested by the Purchasers and use its commercially reasonable efforts to maintain such blue sky qualifications during the period the Company is required to maintain effectiveness of the Resale Registration Statements; *provided, however*, that the Company shall not be required in connection with this **Section 4.2(h)** to qualify as a foreign corporation or execute a general consent to service of process in any jurisdiction in which it is not now so qualified or has not so consented;

(i) upon notification by the Commission that the Resale Registration Statement will not be reviewed or is not subject to further review by the Commission, the Company shall within three Trading Days following the date of such notification request acceleration of such Resale Registration Statement (with the requested effectiveness date to be not more than two Trading Days later);

(j) upon notification by the Commission that that the Resale Registration Statement has been declared effective by the Commission, the Company shall file the final prospectus under Rule 424 of the Securities Act ("**Rule 424**") within the applicable time period prescribed by Rule 424;

(k) advise the Purchasers promptly (and in any event within two (2) Trading Days thereof):

(i) of the effectiveness of the Resale Registration Statement or any post-effective amendments thereto;

(ii) of any request by the Commission for amendments to the Resale Registration Statement or amendments to the prospectus or for additional information relating thereto;

(iii) of the issuance by the Commission of any stop order suspending the effectiveness of the Resale Registration Statement under the Securities Act or of the suspension by any state securities commission of the qualification of the Registrable Shares for offering or sale in any jurisdiction, or the initiation of any proceeding for any of the preceding purposes; and

(iv) of the existence of any fact and the happening of any event that makes any statement of a material fact made in the Resale Registration Statement, the prospectus and amendment or supplement thereto, or any document incorporated by reference therein, untrue, or that requires the making of any additions to or changes in the Resale Registration Statement or the prospectus in order to make the statements therein not misleading;

(l) cause all Registrable Shares to be listed on each securities exchange, if any, on which equity securities by the Company are then listed;

(m) bear all expenses in connection with the procedures in paragraphs (a) through (l) of this **Section 4.2** and the registration of the Registrable Shares on such Resale Registration Statement and the satisfaction of the blue sky laws of such states; and

(n) not, from the date hereof until the effective date of the Mandatory Registration Statement, prepare and file with the Commission a registration statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities, other than any registration statement or post-effective amendment to a registration statement (or supplement thereto) related to the Company's employee benefit plans registered on Form S-8).

4.3 Effect of Failure to File and Obtain and Maintain Effectiveness of Registration Statement. If a Registration Statement covering all of the Registrable Shares required to be covered thereby and required to be filed by the Company pursuant to this Agreement is not filed with the Commission on or before the applicable filing deadline provided herein (the "**Filing Failure**"), then, as partial relief for the damages to any holder by reason of any such delay in or reduction of its ability to sell the underlying shares of Common Stock (which remedy shall not be exclusive of any other remedies available at law or in equity), the Company shall pay to each holder of Registrable Shares relating to such Resale Registration Statement an amount in cash equal to one percent (1.0%) of the aggregate purchase price of such Purchaser's Registrable Shares whether or not included in such Resale Registration Statement on the day of the Filing Failure. The payments to which a holder shall be entitled pursuant to this **Section 4.3** are referred to herein as "**Filing Failure Payments**." The Filing Failure Payments shall be paid on the earlier of (I) the date set forth above and (II) the third Business Day after the event or failure giving rise to the Filing Failure Payment is cured.

4.4 Rule 415; Cutback.

If at any time the staff of the Commission ("**Staff**") takes the position that the offering of some or all of the Registrable Shares in a Registration Statement is not eligible to be

made on a delayed or continuous basis under the provisions of Rule 415 under the Securities Act or requires any Purchaser to be named as an “underwriter,” the Company shall (in consultation with legal counsel to the lead Purchaser) use its commercially reasonable efforts to persuade the Commission that the offering contemplated by the Registration Statement is a valid secondary offering and not an offering “by or on behalf of the issuer” as defined in Rule 415 and that none of the Purchasers is an “underwriter.” In the event that, despite the Company’s commercially reasonable efforts and compliance with the terms of this **Section 4.4**, the Staff refuses to alter its position, the Company shall (i) remove from the Registration Statement such portion of the Registrable Shares (the “**Cut Back Shares**”) and/or (ii) agree to such restrictions and limitations on the registration and resale of the Registrable Shares as the Staff may require to assure the Company’s compliance with the requirements of Rule 415 (collectively, the “**SEC Restrictions**”); provided, however, that the Company shall not agree to name any Purchaser as an “underwriter” in such Registration Statement without the prior written consent of such Purchaser. Any cutback imposed on the Purchasers pursuant to this **Section 4.4** shall be allocated among the Purchasers on a pro rata basis, unless the SEC Restrictions otherwise require or provide or the Purchasers holding a majority of the Registrable Shares otherwise agree. No liquidated damages shall accrue as to any Cut Back Shares until such date as the Company is able to effect the registration of such Cut Back Shares in accordance with any SEC Restrictions (such date, the “**Restriction Termination Date**” of such Cut Back Shares). From and after the Restriction Termination Date applicable to any Cut Back Shares, all of the provisions of this **Section 4** shall again be applicable to such Cut Back Shares; provided, however, that (x) the Filing Deadline for the Registration Statement including such Cut Back Shares shall be 10 Trading Days after such Restriction Termination Date, and (y) the Effectiveness Deadline with respect to such Cut Back Shares shall be the 90th day immediately after the Restriction Termination Date or the 120th day if the Staff reviews such Registration Statement (but in any event no later than three Trading Days from the Staff indicating it has no further comments on such Registration Statement).

4.5 Indemnification.

(a) The Company agrees to indemnify and hold harmless each Purchaser and its affiliates, partners, members, officers, directors, agents and representatives, and each person, if any, who controls such Purchaser within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each, a “**Purchaser Party**” and collectively the “**Purchaser Parties**”), to the fullest extent permitted by applicable law, from and against any losses, claims, damages or liabilities (collectively, “**Losses**”) to which they may become subject (under the Securities Act or otherwise) insofar as such Losses (or actions or proceedings in respect thereof) arise out of, or are based upon, any material breach of this Agreement by the Company or any untrue statement or alleged untrue statement of a material fact contained in the Resale Registration Statement or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading or arise out of any failure by the Company to fulfill any undertaking included in the Resale Registration Statement and the Company will, as incurred, reimburse the Purchaser Parties for any legal or other expenses reasonably incurred in investigating, defending or preparing to defend any such action, proceeding or claim; *provided, however*, that the Company shall not be liable in any such case to the extent that such Loss arises out of, or is based upon: (i) an untrue statement or omission or alleged untrue statement or omission made in such Resale Registration Statement in reliance upon and in conformity with written information furnished to the Company

by or on behalf of such Purchaser specifically for use in preparation of the Resale Registration Statement; or (ii) any breach of this Agreement by such Purchaser; *provided further, however*, that the Company shall not be liable to any Purchaser Party (or any partner, member, officer, director or controlling person of the Purchasers) to the extent that any such Loss is caused by an untrue statement or omission or alleged untrue statement or omission made in any preliminary prospectus if either (i) (A) such Purchaser failed to send or deliver a copy of the final prospectus with or prior to, or such Purchaser failed to confirm that a final prospectus was deemed to be delivered prior to (in accordance with Rule 172 of the Securities Act), the delivery of written confirmation of the sale by such Purchaser to the person asserting the claim from which such Loss resulted and (B) the final prospectus corrected such untrue statement or omission, (ii) (X) such untrue statement or omission is corrected in an amendment or supplement to the prospectus and (Y) having previously been furnished by or on behalf of the Company with copies of the prospectus as so amended or supplemented or notified by the Company that such amended or supplemented prospectus has been filed with the Commission, in accordance with Rule 172 of the Securities Act, such Purchaser thereafter fails to deliver such prospectus as so amended or supplemented, with or prior to or a Purchaser fails to confirm that the prospectus as so amended or supplemented was deemed to be delivered prior to (in accordance with Rule 172 of the Securities Act), the delivery of written confirmation of the sale by such Purchaser to the person asserting the claim from which such Loss resulted or (iii) such Purchaser sold Registrable Shares in violation of such Purchasers' covenants contained in **Section 3.2** of this Agreement.

(b) Each Purchaser agrees, severally and not jointly, to indemnify and hold harmless the Company and its officers, directors, affiliates, agents and representatives and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each a "**Company Party**" and collectively the "**Company Parties**"), from and against any Losses to which the Company Parties may become subject (under the Securities Act or otherwise), insofar as such Losses (or actions or proceedings in respect thereof) arise out of, or are based upon, any material breach of this Agreement by such Purchaser or untrue statement or alleged untrue statement of a material fact contained in the Resale Registration Statement (or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading in each case, on the effective date thereof), if, and only to the extent, such untrue statement or omission or alleged untrue statement or omission was made in reliance upon and in conformity with written information furnished by or on behalf of such Purchaser specifically for use in preparation of the Resale Registration Statement, and each Purchaser, severally and not jointly, will reimburse each Company Party for any legal or other expenses reasonably incurred in investigating, defending or preparing to defend any such action, proceeding or claim; *provided, however*, that in no event shall any indemnity under this **Section 4.5(b)** be greater in amount than the dollar amount of the net proceeds received by such Purchaser upon its sale of the Registrable Shares included in the Registration Statement giving rise to such indemnification obligation.

(c) Promptly after receipt by any indemnified person of a notice of a claim or the beginning of any action in respect of which indemnity is to be sought against an indemnifying person pursuant to this **Section 4.5**, such indemnified person shall notify the indemnifying person in writing of such claim or of the commencement of such action, and, subject to the provisions hereinafter stated, in case any such action shall be brought against an indemnified person and such

indemnifying person shall have been notified thereof, such indemnifying person shall be entitled to participate therein, and, to the extent that it shall wish, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified person. After notice from the indemnifying person to such indemnified person of its election to assume the defense thereof, such indemnifying person shall not be liable to such indemnified person for any legal expenses subsequently incurred by such indemnified person in connection with the defense thereof; *provided, however*, that if there exists or shall exist a conflict of interest that would make it inappropriate in the reasonable judgment of the indemnified person for the same counsel to represent both the indemnified person and such indemnifying person or any affiliate or associate thereof, the indemnified person shall be entitled to retain its own counsel at the expense of such indemnifying person; provided, further, that no indemnifying person shall be responsible for the fees and expense of more than one separate counsel for all indemnified parties. The indemnifying party shall not settle an action without the consent of the indemnified party, which consent shall not be unreasonably withheld.

(d) If after proper notice of a claim or the commencement of any action against the indemnified party, the indemnifying party does not choose to participate, then the indemnified party shall assume the defense thereof and upon written notice by the indemnified party requesting advance payment of a stated amount for its reasonable defense costs and expenses, the indemnifying party shall advance payment for such reasonable defense costs and expenses (the “**Advance Indemnification Payment**”) to the indemnified party. In the event that the indemnified party’s actual defense costs and expenses exceed the amount of the Advance Indemnification Payment, then upon written request by the indemnified party, the indemnifying party shall reimburse the indemnified party for such difference; in the event that the Advance Indemnification Payment exceeds the indemnified party’s actual costs and expenses, the indemnified party shall promptly remit payment of such difference to the indemnifying party.

(e) If the indemnification provided for in this **Section 4.5** is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any losses, claims, damages or liabilities referred to herein, the indemnifying party, in lieu of indemnifying such indemnified party thereunder, shall to the extent permitted by applicable law contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other, as well as any other relevant equitable considerations; provided, that in no event shall any contribution by an indemnifying party hereunder be greater in amount than the dollar amount of the proceeds received by such indemnifying party upon the sale of such Registrable Shares.

4.6 Prospectus Suspension. Each Purchaser acknowledges that there may be times when the Company must suspend the use of the prospectus forming a part of the Resale Registration Statement until such time as an amendment to the Resale Registration Statement has been filed by the Company and declared effective by the Commission, or until such time as the Company has filed an appropriate report with the Commission pursuant to the Exchange Act. Each Purchaser hereby covenants that it will not sell any Registrable Shares pursuant to said prospectus during the period commencing at the time at which the Company gives the Purchasers notice of the suspension of the use of said prospectus and ending at the time the Company gives the Purchasers notice that the Purchasers may thereafter effect sales pursuant to said prospectus; provided, that such suspension periods shall in no event exceed 30 days in any 12 month period

and that, in the good faith judgment of the Company's board of directors, the Company would, in the absence of such delay or suspension hereunder, be required under state or federal securities laws to disclose any corporate development, a potentially significant transaction or event involving the Company, or any negotiations, discussions, or proposals directly relating thereto, in either case the disclosure of which would reasonably be expected to have a material adverse effect upon the Company or its stockholders.

4.7 Termination of Obligations. The obligations of the Company pursuant to **Section 4.2** hereof shall cease and terminate, with respect to any Registrable Shares, upon the earlier to occur of (a) such time such Registrable Shares have been resold, or (b) such time as such Registrable Shares no longer remain Registrable Shares pursuant to **Section 4.1(b)** hereof.

4.8 Reporting Requirements.

(a) With a view to making available the benefits of certain rules and regulations of the Commission that may at any time permit the sale of the Shares to the public without registration or pursuant to a registration statement on Form S-3, the Company agrees to use:

(i) make and keep public information available, as those terms are understood and defined in Rule 144;

(ii) file with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act; and

(iii) so long as a Purchaser owns Registrable Shares, to furnish to such Purchaser upon request (A) a written statement by the Company as to whether it is in compliance with the reporting requirements of Rule 144, the Securities Act and the Exchange Act, or whether it is qualified as a registrant whose securities may be resold pursuant to Commission Form S-3, (B) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company and (C) such other information as may be reasonably requested to permit the Purchaser to sell such securities pursuant to Rule 144.

4.9 Blue Sky. The Company shall obtain and maintain all necessary blue sky law permits and qualifications, or secured exemptions therefrom, required by any state for the offer and sale of Registrable Shares.

5. OTHER AGREEMENTS OF THE PARTIES

5.1 Integration. Except as contemplated by the terms of this Agreement, the Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Shares such that the rules of Nasdaq would require shareholder approval of this transaction prior to the closing of such other transaction unless shareholder approval is obtained before the closing of such subsequent transaction.

5.2 Securities Laws Disclosure; Publicity. The Company shall: (a) issue a press release disclosing the material terms of the transactions contemplated hereby promptly following the execution and delivery hereof which shall have been previously reviewed by counsel for the

Lead Placement Agent (the “**Press Release**”), and (b) by 5:30 p.m. (New York City time) on the fourth Trading Day following the date hereof, file a Current Report on Form 8-K disclosing the material terms of the transactions contemplated hereby which shall have been previously reviewed by counsel for the Lead Placement Agent (the “**Form 8-K**”). From and after the issuance of the Press Release, no Purchaser shall be in possession of any material, non-public information received from the Company or any of their respective officers, directors or employees that is not disclosed in the Press Release, other than certain of the Non-Public Information (as defined in **Section 5.3**). Subject to the foregoing, neither the Company nor any Purchaser shall issue any press releases or any other public statements with respect to the transactions contemplated hereby except as may be reviewed and approved by the Company and counsel to the Lead Placement Agent; provided, however, that the Company shall be entitled, without the prior approval of any Purchaser, to make any press release or other public disclosure as is required by applicable law and regulations.

5.3 Non-Public Information. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company’s reorganization strategy and certain clinical data communicated to those Purchasers who received it via netroadshow (collectively, “**Non-Public Information**”), the Company covenants and agrees that neither it nor any other person acting on its behalf will provide any Purchaser or its agents or counsel with any information that the Company believes constitutes material non-public information. The Company covenants and agrees that it will publicly disclose the Non-Public Information by no later than April 30, 2020.

5.4 Use of Proceeds. The Company will use the proceeds from the offering to advance the defactinib and CH5126766 program.

5.5 Reservation of Common Stock. As of the date hereof, the Company has reserved and the Company shall continue to reserve and keep available at all times, free of preemptive rights, a sufficient number of shares of Common Stock for the purpose of enabling the Company to issue the Shares.

5.6 Disqualification Events. The Company will notify the Purchasers and the Placement Agents in writing, prior to the Closing Date of (i) any Disqualification Event relating to any Company Covered Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Company Covered Person.

5.7 Nasdaq Listing. In the time and manner required by the Nasdaq, the Company shall prepare and file with Nasdaq an additional shares listing application covering all of the Shares and shall use its commercially reasonable efforts to take all steps necessary to cause all of the Shares to be approved for listing on Nasdaq as promptly as possible thereafter.

6. MISCELLANEOUS

6.1 Termination. This Agreement may be terminated by any Purchaser, as to such Purchaser’s obligations hereunder only and without any effect whatsoever on the obligations between the Company and the other Purchasers, by written notice to the other parties, if the Closing has not been consummated within ten calendar days from the Effective Date through no fault of such Purchaser; *provided, however*, that no such termination will affect the right of any party to sue for any breach by the other party (or parties).

6.2 Fees and Expenses. Except as expressly set forth in the Transaction Documents to the contrary, each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement. Notwithstanding the foregoing, the Company shall pay all transfer agent fees, stamp taxes and other taxes and duties levied in connection with the delivery of any Shares to the Purchasers.

6.3 Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral or written, with respect to such subject matter, which the parties acknowledge have been merged into such documents, exhibits and schedules.

6.4 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective upon actual receipt via mail, courier or confirmed email by the party to whom such notice is required to be given. The address for such notices and communications shall be as set forth on the signature pages attached hereto.

6.5 Amendments; Waivers. No provision of this Agreement may be waived or amended except in a written instrument signed, in the case of an amendment, by (a) the Company and (b) Purchasers holding at least a majority of the Shares sold in the Closing (as a single class on an as-converted to Common Stock basis) and then-held by a Purchaser or, in the case of a waiver, by the party against whom enforcement of any such waived provision is sought. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right.

6.6 Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

6.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of each Purchaser (other than by merger). The Purchasers may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Company (other than by merger).

6.8 Third-Party Beneficiaries. The Placement Agents shall be the third party beneficiaries of the representations and warranties of the Company in **Section 3.1**, the representations, warranties and covenants of the Purchasers in **Section 3.2**, **Section 5.2** and **Section 5.6** of this Agreement. This Agreement is intended for the benefit of the parties hereto, as well as the Placement Agents to the extent any of them is a third party beneficiary pursuant to this **Section 6.8**, and their respective permitted successors and assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other person, except as otherwise set forth in **Section 4.5(a)** and this **Section 6.8**.

6.9 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the State of New York for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If either party shall commence an action or proceeding to enforce any provisions of the Transaction Documents, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

6.10 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to each other party, it being understood that the parties need not sign the same counterpart. In the event that any signature on this Agreement is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a legally valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

6.11 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

6.12 Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) any of the other Transaction Documents, whenever any Purchaser exercises a right, election, demand or option under a

Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then such Purchaser may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights.

6.13 Replacement of Shares. If any certificate or instrument evidencing any Shares is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof (in the case of mutilation), or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and customary and reasonable indemnity or bond, if requested. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs (including customary indemnity) associated with the issuance of such replacement Shares.

6.14 Remedies. The Company shall be entitled to exercise all rights provided herein or granted by law, including recovery of damages, for any breach of the Transaction Documents.

6.15 Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under any Transaction Document are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance or non-performance of the obligations of any other Purchaser under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Purchaser pursuant thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Purchaser shall be entitled to independently protect and enforce its rights, including without limitation, the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose.

6.16 Construction. The parties agree that each of them and/or their respective counsel has reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments hereto.

6.17 WAIVER OF JURY TRIAL. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVES FOREVER TRIAL BY JURY.

[Remainder of page intentionally left blank.]

In Witness Whereof, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

VERASTEM, INC.

/s/ Robert Gagnon

Name: Robert Gagnon

Title: Chief Business and Financial
Officer

PURCHASERS:

**Venrock Healthcare Capital Partners III,
L.P.**

By: VHCP Management III, LLC, its General
Partner

By: VR Adviser, LLC, its Manager

By: /s/ David L. Stepp

Name: David L. Stepp

Title: Authorized Signatory

PURCHASERS:

VHCO Co-Investment Holdings III, LLC

By: VHCP Management III, LLC, its Manager

By: VR Adviser, LLC, its Manager

By: /s/ David L.
Stepp

Name: David L.
Stepp

Title: Authorized Signatory

PURCHASERS:

EcoR1 Capital Fund, LP

By: _____ /s/ _____ Oleg
Nodelman

Name: _____ Oleg
Nodelman

Title: Manager, EcoR1 Capital LLC, as GP

PURCHASERS:

EcoR1 Capital Fund Qualified, LP

By: /s/ Oleg
Nodelman

Name: Oleg
Nodelman

Title: Manager, EcoR1 Capital LLC, as GP

PURCHASERS:

Acuta Opportunity Fund, LP

By: /s/ _____ Manfred
Yu

Name: _____ Manfred
Yu

Title: Chief Operating Officer of the general
partner

PURCHASERS:

Acuta Capital Fund, LP

By: /s/ _____ Manfred
Yu

Name: _____ Manfred
Yu

Title: Chief Operating Officer of the general
partner

PURCHASERS:

CVI Investments, Inc.

c/o Heights Capital Management, Inc., its
authorized Agent

By: /s/ _____ J. _____ Brad
Alles

Name: _____ J. _____ Brad
Alles

Title: Investment Manager

PURCHASERS:

Vivo Opportunity Fund, L.P.

By: Vivo Opportunity, LLC, General Partner

By: /s/ _____ Albert
Cha

Name: _____ Albert
Cha

Title: Managing Manager

PURCHASERS:

Vivo Capital Fund IX, L.P.

By: Vivo Capital IX, LLC, General Partner

By: /s/ Albert
Cha

Name: Albert
Cha

Title: Managing Manager

PURCHASERS:

Farallon Capital Partners, L.P.

By: Farallon Partners, L.L.C., its General
Partner

By: /s/ Thomas G. Roberts,
Jr.

Name: Thomas G. Roberts,
Jr.

Title: Managing Manager

PURCHASERS:

Farallon Capital Institutional Partners, L.P.

By: Farallon Partners, L.L.C., its General
Partner

By: /s/ Thomas G. Roberts,
Jr.

Name: Thomas G. Roberts,
Jr.

Title: Managing Manager

PURCHASERS:

**Farallon Capital Institutional Partners II,
L.P.**

By: Farallon Partners, L.L.C., its General
Partner

By: /s/ Thomas G. Roberts,
Jr.

Name: Thomas G. Roberts,
Jr.

Title: Managing Manager

PURCHASERS:

**Farallon Capital Institutional Partners III,
L.P.**

By: Farallon Partners, L.L.C., its General
Partner

By: /s/ Thomas G. Roberts,
Jr.

Name: Thomas G. Roberts,
Jr.

Title: Managing Manager

PURCHASERS:

Four Crossings Institutional Partners V, L.P.

By: Farallon Institutional (GP) V, L.L.C.,
its General Partner

By: /s/ Thomas G. Roberts,
Jr.

Name: Thomas G. Roberts,
Jr.

Title: Manager

PURCHASERS:

Farallon Capital Offshore Investors II, L.P.

By: Farallon Partners, L.L.C., its General
Partner

By: /s/ Thomas G. Roberts,
Jr.

Name: Thomas G. Roberts,
Jr.

Title: Managing Member

PURCHASERS:

Farallon Capital F5 Master I, L.P.

By: Farallon F5 (GP), L.L.C., its General
Partner

By: /s/ Thomas G. Roberts,
Jr.

Name: Thomas G. Roberts,
Jr.

Title: Manager

PURCHASERS:

Farallon Capital (AM) Investors, L.P.

By: Farallon Partners, L.L.C., its General
Partner

By: /s/ Thomas G. Roberts,
Jr.

Name: Thomas G. Roberts,
Jr.

Title: Managing Member

PURCHASERS:

Avidity Master Fund LP

By: _____ /s/ _____ Michael
Gregory.

Name: _____ Michael
Gregory.

Title: Director

PURCHASERS:

Blackwell Partners LLC – Series A, solely with respect to the assets for which RA Capital Management, L.P. acts as investment manager

By: _____/s/ _____ Rajeev
Shah

Name: _____ Rajeev
Shah

Title: Authorized Signatory of RA Capital Management, L.P., acting in its capacity as investment manager

PURCHASERS:

RA Capital Healthcare Fund, L.P.

By: RA Capital Healthcare Fund GP, LLC, its
General Partner

By: /s/ Rajeev
Shah

Name: Rajeev
Shah

Title: Manager



EXHIBIT A
CLOSING SCHEDULE

| Name | Shares of Common Stock to be Purchased | Purchase Price for Common Stock |
|--|---|---------------------------------------|
| VHCP Co-Investment Holdings III, LLC | 338,266 | \$727,271.90 |
| Venrock Healthcare Capital Partners III, L.P. | 3,382,664 | \$7,272,727.60 |
| RA Capital Healthcare Fund, L.P. | 15,917,532 | \$34,222,693.80 |
| Blackwell Partners LLC | 2,687,119 | \$5,777,305.85 |
| Acuta Capital Fund, LP | 3,013,953 | \$6,479,998.95 |
| Acuta Opportunity Fund, LP | 706,977 | \$1,520,000.55 |
| Logos Global Master Fund, LP | 2,325,582 | \$5,000,001.30 |
| Vivo Opportunity Fund, L.P. | 6,654,632 | \$14,307,458.80 |
| Vivo Capital Fund IX, L.P. | 1,484,903 | \$3,192,541.45 |
| Farallon Capital Partners, L.P. | 818,605 | \$1,760,000.75 |
| Farallon Capital Institutional Partners, L.P. | 893,023 | \$1,919,999.45 |
| Farallon Capital Institutional Partners II, L.P. | 111,628 | \$240,000.20 |
| Farallon Capital Institutional Partners III, L.P. | 55,814 | \$120,000.10 |
| Four Crossings Institutional Partners V, L.P. | 111,628 | \$240,000.20 |
| Farallon Capital Offshore Investors II, L.P. | 1,516,279 | \$3,259,999.85 |
| Farallon Capital F5 Master I, L.P. | 148,837 | \$319,999.55 |
| Farallon Capital (AM) Investors, L.P. | 65,116 | \$139,999.40 |
| Avidity Master Fund LP | 2,790,698 | \$6,000,000.70 |
| EcoR1 Capital Fund Qualified, LP | 2,702,649 | \$5,810,695.35 |
| EcoR1 Capital Fund, LP | 553,164 | \$1,189,302.60 |
| CVI Investments, Inc. | 232,559 | \$500,001.85 |
| Total: | 46,511,628 | 100,000,000.20 |

EXHIBIT B

On February 2, 2016, pursuant to an offer of settlement by Jefferies LLC, the SEC entered an administrative order, pursuant to its Municipalities Continuing Disclosure Cooperation (“MCDC”) initiative, finding that Jefferies LLC, in connection with its underwriting of certain municipal securities offerings, willfully violated Section 17(a)(2) of the Securities Act of 1933. The administrative order requires Jefferies LLC to cease and desist from committing or causing any violations or any future violations of Section 17(a)(2), to pay a civil penalty, and to complete certain undertakings. Jefferies LLC received waivers from the SEC of any disqualifications under Regulations A (Rule 262), D (Rule 505 and 506), and E arising from the settlement, effective as of February 2, 2016. The SEC Order is available at <https://www.sec.gov/rules/other/2016/33-10030.pdf>.



Verastem Oncology Announces \$100 Million Private Placement Offering of Common Stock to Premier Life Sciences Investors

BOSTON--(BUSINESS WIRE)— February 28, 2020 -- Verastem, Inc. (NASDAQ: VSTM) (the “Company”), today announced that it has agreed to sell approximately 46.5 million shares of its common stock to certain institutional investors, including RA Capital Management, Vivo Capital, Venrock Healthcare Capital Partners, Farallon Capital Management, Acuta Capital, EcoR1 Capital LLC, Avidity Partners and Logos Capital, in a private placement. The Company anticipates aggregate gross proceeds from the offering will be approximately \$100 million, before deducting fees to the placement agents and other estimated offering expenses payable by the Company, based on the offering price of \$2.15 per share, a 12.6% premium to the February 27, 2020 closing price. The closing is anticipated to occur on March 3, 2020 subject to customary closing conditions. The Company intends to use the net proceeds from the offering to advance the defactinib and CH5126766 (VS-6766) programs, as well as for general corporate purposes.

Jefferies acted as sole lead placement agent for the offering and H.C. Wainwright & Co. acted as a placement agent.

The securities are being sold in a private placement and have not been registered under the Securities Act of 1933, as amended (the “Securities Act”), and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements. The Company has agreed to file a resale registration statement with the Securities and Exchange Commission (the “SEC”) as soon as practicable, and in all events within 30 days of the closing of the offering, for purposes of registering the resale of the shares of common stock issued or issuable in connection with the offering.

This press release does not constitute an offer to sell or the solicitation of an offer to buy the securities, nor shall there be any sale of the securities in any state in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of such state. Any offering of the securities under the resale registration statement will only be by means of a prospectus.

About Verastem Oncology

Verastem Oncology (Nasdaq: VSTM) is a commercial biopharmaceutical company committed to the development and commercialization of new medicines to improve the lives of patients diagnosed with cancer. Our pipeline is focused on novel small molecule drugs that inhibit critical signaling pathways in cancer that promote cancer cell survival and tumor growth, including phosphoinositide 3-kinase (PI3K), focal adhesion kinase (FAK) and RAF/MEK inhibition.

Our first FDA approved product is available for the treatment of patients with certain types of indolent non-Hodgkin’s lymphoma (iNHL).

For more information, please visit www.verastem.com.

Cautionary Note Regarding Forward-Looking Statements

This press release includes forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 that are subject to risks, uncertainties and other factors, including without limitation, statements regarding the expected timing for the closing of the private placement and the expected use of proceeds from the private placement. These risks, uncertainties and other factors could cause actual results to differ materially from those referred to in the forward-looking statements, including, without limitation, whether or not the Company will be able to consummate the private placement on the timeline or with the terms anticipated, if at all. The reader is cautioned not to rely on these forward-looking statements. Other risks and uncertainties include those identified under the heading “Risk Factors” in the Company’s Quarterly Reports on Form 10-Q for the quarterly periods ended June 30, 2019 and September 30, 2019, as filed with the Securities and Exchange Commission on August 1, 2019 and October 30, 2019, respectively, its Annual Report on Form 10-K for the year ended December 31, 2018 as filed with the SEC on March 12, 2019, and in any subsequent filings with the SEC. The forward-looking statements contained in this press release reflect Verastem Oncology’s views as of the date hereof, and the Company does not assume and specifically disclaims any obligation to update any forward-looking statements whether as a result of new *information*, future events or otherwise, except as required by law.

Contacts

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Source: Verastem, Inc.



Verastem Oncology Announces New Strategic Direction to Advance Its Clinical Development Programs

Transformative Initiative Expected to Accelerate Development of CH5126766 (VS-6766), a RAF/MEK Inhibitor, in Combination with Defactinib, a FAK Inhibitor, for the Treatment of KRAS Mutant Solid Tumors

Company Continues to Advance Development of Duvelisib for the Treatment of Relapsed/Refractory PTCL

Strengthened Balance Sheet Through Private Placement Resulting in Anticipated Gross Proceeds of \$100 Million; Projected Cash Runway into 4Q 2021

New Strategic Direction Expected to Result in an Approximately 40% Reduction in Operating Expenses for 2020 Compared to 2019

Management to Host Conference Call Tomorrow at 8:00 AM ET

BOSTON, MA – February 28, 2020 – Verastem, Inc. (Nasdaq:VSTM) (also known as Verastem Oncology), a biopharmaceutical company committed to developing and commercializing new medicines for patients battling cancer, today announced a new strategic direction to accelerate the advancement of certain of its clinical development programs. The Company's primary focus will be on the development of CH5126766 (VS-6766), its RAF/MEK inhibitor, in combination with defactinib, its focal adhesion kinase (FAK) inhibitor, for the treatment of KRAS mutant solid tumors. Verastem Oncology will also continue to advance the development of duvelisib (COPIKTRA®) for the treatment of relapsed or refractory peripheral T-cell lymphoma (PTCL).

“With our newly expanded development pipeline and strengthened balance sheet, we believe this new strategic direction will be transformative for Verastem Oncology as we will have the opportunity to rapidly advance the development of the clinical programs that we believe will yield the greatest results for patients, physicians and shareholders,” said Brian Stuglik, Chief Executive Officer of Verastem Oncology. “We are honored to have leading life science investors participate in our recently announced private placement. Verastem Oncology’s mission is centered on improving the lives of cancer patients and we believe our work in collaboration with the scientific community has presented significant opportunity to make further meaningful strides in areas of critical need.”

Accelerating Development of CH5126766 (VS-6766) and Defactinib Combination

In early 2020, Verastem Oncology licensed exclusive global development and commercialization rights to CH5126766 (VS-6766), a unique and promising inhibitor of the RAF/MEK signaling pathway. The combination of CH5126766 (VS-6766) and defactinib is currently being investigated in a Phase 1 clinical study and expansion cohorts in patients with KRAS mutant advanced solid tumors, including low grade

serous ovarian cancer (LGSOC), non-small cell lung cancer (NSCLC) and colorectal cancer (CRC). Data from this Phase 1 study have been submitted for presentation at the upcoming American Association for Cancer Research (AACR) 2020 Annual Meeting. Verastem Oncology plans to initiate discussions with regulatory authorities during the first half of 2020, with the goal of commencing a registration-directed trial as soon as possible.

Advancing Duvelisib in Relapsed/Refractory PTCL

At the American Society of Hematology (ASH) 2019 Annual Meeting, Verastem Oncology presented positive data from the dose optimization portion of the Phase 2 PRIMO study evaluating duvelisib in patients with relapsed or refractory PTCL, an aggressive disease with a lack of effective therapeutic options. This initial phase of the trial demonstrated promising clinical activity including complete and durable responses, as assessed by independent central review, with a manageable safety profile. The expansion phase of this registration-directed study continues to accrue patients and Verastem Oncology expects to complete enrollment in 2020 and report top-line results from the expansion cohorts in early 2021. Verastem Oncology intends to build on the existing Fast Track and Orphan Drug Designations and submit a regulatory package to the U.S. Food and Drug Administration to expand the approved indications for COPIKTRA to include relapsed or refractory PTCL.

Focusing COPIKTRA Commercial Activities

Verastem Oncology generated preliminary unaudited COPIKTRA net product revenue of \$3.6 million for the fourth quarter of 2019, compared to \$4.0 million for the third quarter of 2019, and \$12.3 million for the full year 2019. Net sales were impacted by timing of purchases and gross to net adjustments associated with Medicare Part D (“donut hole”). Demand units increased 20% from third quarter to fourth quarter 2019. Going forward, Verastem Oncology will be reducing the resources directed to the promotion and sale of COPIKTRA in its current indications, including reducing the size of its salesforce and non-core clinical research. Verastem Oncology plans to shift its COPIKTRA promotional resources toward large, community-based practices and academic institutions, which represent the majority of the appropriate third-line patients with chronic lymphocytic leukemia/small lymphocytic lymphoma (CLL/SLL) and follicular lymphoma (FL).

Financial Benefits of the Strategic Realignment and 2020 Financial Outlook

As a result of this strategic realignment, Verastem Oncology expects to reduce its operating expenses by approximately 40% for 2020 compared to 2019. Based on its current operating plans, Verastem Oncology expects its research and development and selling, general and administrative expenses for the full year 2020 to be in the range of \$70 million to \$85 million. As of December 31, 2019, Verastem Oncology had preliminary unaudited cash and short-term investments of \$111.3 million. As announced today, Verastem Oncology anticipates completing a private placement of approximately 46.5 million shares of its common stock at an offering price of \$2.15 per share on March 3, 2020, resulting in gross proceeds of approximately \$100 million to Verastem Oncology before deducting expenses to the placement agents and other estimated offering expenses. Verastem Oncology expects that its existing cash and cash equivalents, along with the revenue it expects to generate from COPIKTRA, will be sufficient to fund its planned operations into the fourth quarter of 2021.

Conference Call and Webcast Information

The Verastem Oncology management team will host a conference call and webcast today, Friday, February 28, 2020, at 8:00 AM ET. The call can be accessed by dialing (877) 341-5660 (U.S. and Canada) or (315) 625-3226 (international), five minutes prior to the start of the call and providing the passcode 4164157.

The live, listen-only webcast of the conference call can be accessed by visiting the investors section of the Company's website at www.verastem.com. A replay of the webcast will be archived on the Company's website for 90 days following the call.

About CH5126766

CH5126766 (VS-6766) (previously referred to as CKI27 and RO5126766) is a unique inhibitor of the RAF/MEK signaling pathway. In contrast to other MEK inhibitors in development, CH5126766 (VS-6766) blocks both MEK kinase activity and the ability of RAF to phosphorylate MEK. This unique mechanism allows CH5126766 (VS-6766) to block MEK signaling without the compensatory activation of MEK that appears to limit the efficacy of other inhibitors. The combination of CH5126766 (VS-6766) and the focal adhesion kinase (FAK) inhibitor defactinib is currently being investigated in a clinical study (Phase 1 followed by expansion cohorts) with the expansion cohorts now ongoing in patients with KRAS mutant advanced solid tumors, including low grade serous ovarian cancer (LGSOC), non-small cell lung cancer (NSCLC) and colorectal cancer (CRC). The ongoing clinical study of the CH5126766 (VS-6766)/defactinib combination is supported by single-agent Phase 2 studies which investigated defactinib in KRAS mutant NSCLC and CH5126766 (VS-6766) in KRAS mutant NSCLC and LGSOC.

About Defactinib

Defactinib is an oral small molecule inhibitor of FAK and PYK2 that is currently being evaluated as a potential combination therapy for various solid tumors. The Company has received Orphan Drug designation for defactinib in ovarian cancer and mesothelioma in the US, EU and Australia. Preclinical research by Verastem Oncology scientists and collaborators at world-renowned research institutions has described the effect of FAK inhibition to enhance immune response by decreasing immuno-suppressive cells, increasing cytotoxic T cells, and reducing stromal density, which allows tumor-killing immune cells to enter the tumor.^{1,2} A Phase 1/2 clinical trial of defactinib in combination with CH5126766 (VS-6766) in patients with KRAS mutant advanced solid tumors, including low grade serous ovarian cancer (LGSOC), non-small cell lung cancer (NSCLC) and colorectal cancer (CRC) is underway.³ The CH5126766 (VS-6766)/defactinib combination is supported by single-agent Phase 2 studies which investigated defactinib in KRAS mutant NSCLC⁴ and CH5126766 (VS-6766) in KRAS mutant NSCLC and LGSOC.⁵ Defactinib is also in clinical testing in combination with pembrolizumab for treatment of patients with pancreatic cancer, NSCLC and mesothelioma.⁶

About COPIKTRA® (duvelisib)

COPIKTRA is an oral inhibitor of phosphoinositide 3-kinase (PI3K), and the first approved dual inhibitor of PI3K-delta and PI3K-gamma, two enzymes known to help support the growth and survival of malignant B-

cells. PI3K signaling may lead to the proliferation of malignant B-cells and is thought to play a role in the formation and maintenance of the supportive tumor microenvironment.^{7,8,9}

COPIKTRA is indicated for the treatment of adult patients with relapsed or refractory chronic lymphocytic leukemia/small lymphocytic lymphoma (CLL/SLL) after at least two prior therapies and relapsed or refractory follicular lymphoma (FL) after at least two prior systemic therapies. COPIKTRA is also being developed by Verastem Oncology for the treatment of peripheral T-cell lymphoma (PTCL), for which it has received Fast Track status and Orphan Drug Designation, and is being investigated in combination with other agents through investigator-sponsored studies.¹⁰ For more information on COPIKTRA, please visit www.COPIKTRA.com. Information about duvelisib clinical trials can be found on www.clinicaltrials.gov.

About Verastem Oncology

Verastem Oncology (Nasdaq: VSTM) is a commercial biopharmaceutical company committed to the development and commercialization of new medicines to improve the lives of patients diagnosed with cancer. Our pipeline is focused on novel small molecule drugs that inhibit critical signaling pathways in cancer that promote cancer cell survival and tumor growth, including phosphoinositide 3-kinase (PI3K), focal adhesion kinase (FAK) and RAF/MEK inhibition.

Our first FDA approved product is available for the treatment of patients with certain types of indolent non-Hodgkin's lymphoma (iNHL).

For more information, please visit www.verastem.com.

Forward-Looking Statements Notice

This press release includes forward-looking statements about Verastem Oncology's strategy, future plans and prospects, including statements related to the opportunity to rapidly advance the development of clinical programs through Verastem Oncology's expanded development pipeline and strengthened balance sheet, the timing of top-line results for clinical trials, anticipated reductions in operating expenses from Verastem Oncology's strategic realignment, the timing of commencing a registration-directed trial for CH5126766 (VS-6766) and financial guidance estimates. The words "anticipate," "believe," "estimate," "expect," "intend," "may," "plan," "predict," "project," "target," "potential," "will," "would," "could," "should," "continue," and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. Each forward-looking statement is subject to risks and uncertainties that could cause actual results to differ materially from those expressed or implied in such statement.

Each forward-looking statement is subject to risks and uncertainties that could cause actual results to differ materially from those expressed or implied in such statement. Applicable risks and uncertainties include the risks and uncertainties, among other things, regarding: the success in the development and potential commercialization of our product candidates, including defactinib in combination with CH5126766 (VS-6766); the occurrence of adverse safety events and/or unexpected concerns that may arise from additional data or analysis or result in unmanageable safety profiles as compared to their levels of efficacy; our ability to obtain, maintain and enforce patent and other intellectual property protection for our product candidates; the scope, timing, and outcome of any legal proceedings; decisions by

regulatory authorities regarding labeling and other matters that could affect the availability or commercial potential of our product candidates; whether preclinical testing of our product candidates and preliminary or interim data from clinical trials will be predictive of the results or success of ongoing or later clinical trials; that the timing, scope and rate of reimbursement for our product candidates is uncertain; that third-party payors (including government agencies) may not reimburse; that there may be competitive developments affecting our product candidates; that data may not be available when expected; that enrollment of clinical trials may take longer than expected; that our product candidates will experience manufacturing or supply interruptions or failures; that we will be unable to successfully initiate or complete the clinical development and eventual commercialization of our product candidates; that the development and commercialization of our product candidates will take longer or cost more than planned; that we or Chugai Pharmaceutical Co., Ltd. will fail to fully perform under the CH5126766 (VS-6766) license agreement; that we may not have sufficient cash to fund our contemplated operations; that we may be unable to make additional draws under our debt facility or obtain adequate financing in the future through product licensing, co-promotional arrangements, public or private equity, debt financing or otherwise; that we will be unable to execute on our partnering strategies for defactinib in combination with CH5126766 (VS-6766); that we will not pursue or submit regulatory filings for our product candidates, and that our product candidates will not receive regulatory approval, become commercially successful products, or result in new treatment options being offered to patients.

Other risks and uncertainties include those identified under the heading “Risk Factors” in the Company’s Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2019, as filed with the Securities and Exchange Commission (SEC) on October 30, 2019, its Annual Report on Form 10-K for the year ended December 31, 2018 as filed with the SEC on March 12, 2019 and in any subsequent filings with the SEC. The forward-looking statements contained in this press release reflect Verastem Oncology’s views as of the date hereof, and the Company does not assume and specifically disclaims any obligation to update any forward-looking statements whether as a result of new information, future events or otherwise, except as required by law.

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